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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-735

Filed 16 April 2025

Wake County, Nos. 21 CR 216345-910, 21 CR 216346-910, 21 CR 216347-910, 23
CR 024847-910

STATE OF NORTH CAROLINA

v.

JIM ROBINSON III, Defendant.

Appeal by Defendant from judgment entered 13 December 2023 by Judge
Claire V. Hill in Wake County Superior Court. Heard in the Court of Appeals 25
February 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Taylor H.
Crabtree, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace
M. Washington, for the Defendant–Appellant.*

MURRY, Judge.

Jim Robinson III (Defendant) appeals from a judgment entered upon jury
verdicts finding him guilty of two counts of robbery with a dangerous weapon, one
count of conspiracy to commit robbery with a dangerous weapon, and one count of
possession of a firearm by a felon. *See* N.C.G.S. § 14-87(a) (robbery) (2023); *id.* § 14-2.4

(conspiracy); *id.* § 14-415.1(a) (possession). For the reasons below, this Court holds that the Defendant received a fair trial, free from error.

I. Background

In the early evening of 2 October 2021, Michelle Lofton contacted her acquaintance, Shalonda Bobbitt, to purchase several grams of crack cocaine. At Lofton’s suggestion, Bobbitt left her apartment to complete the sale and walked toward what she believed was Lofton’s car. Lofton’s then-boyfriend, Defendant, and an accomplice exited the vehicle instead of Lofton with guns and red bananas partially obscuring their faces. As Bobbitt later confirmed in the investigation, the “red bandanas . . . covered their mouths[] but not their eyes or noses.” She noticed Defendant’s ‘foaming . . . mouth and . . . really big” eyes, then heard the accomplice yell, “Let’s go, Jim, let’s go,” as they both ran back to their getaway car after robbing her at gunpoint. Because she had already met Jim through Lofton several times prior to that night, Bobbitt immediately recognized her primary assailant as Defendant through his heavysset frame and bald head.

Over the next several days, Detective Nathan Braswell of the Raleigh Police Department (the Department) investigated the robbery. He interviewed Lofton, who stated that Defendant and his accomplice had decided to rob Bobbitt on the way to the sale. Once she realized their plans and refused to participate, they threatened her into silence. The detective then gathered composite information from Bobbitt about certain traits she recognized in her assailant for the purpose of constructing a

photo lineup under the Eyewitness Identification Reform Act (“EIRA” or “the Act”). See An Act to Enact the Eyewitness Identification Reform Act, S.L. 2007-421, 2007 N.C. Sess. Law 1251, 1251–54 (codified as amended at N.C.G.S. §§ 15A-284.50–.53 (2023)). After selecting Defendant’s “most recent [photo] from the date of the incident” alongside five other “similar people” (Fillers) from a state investigatory database, Detective Braswell gave the documentation (Exhibit M3) to Detective Jason Canty to perform an independent lineup. During this lineup, Bobbitt identified Defendant as her assailant from among the five other Fillers with “100%” certainty.

On 6 October 2023, Defendant moved to challenge the photo lineup on the grounds that it had “improperly suggest[ed]” Defendant’s identification because Filler #4 and Filler #6 were lighter in facial weight and skin complexion, respectively, than Defendant. On 11 December 2023, the trial court denied the motion with an order documenting as its relevant findings of fact that:

2. The robbery took place at night . . . [amidst] some lighting.
....
4. During the robbery, two perpetrators . . . w[ore] red bandanas which covered their mouths, but not their eyes or noses.
....
6. Ms. Bobbitt was attentive at the time of the crime and had a good opportunity to view her assailant.
....
11. . . . Following Ms. Bobbitt’s interview, Det. Braswell prepared a photographic lineup to verify that . . . [D]efendant . . . was the correct Jim Robinson as stated by Ms. Bobbitt.
....

14. Det. Braswell enlisted the assistance of Det. Jason Canty to administer the lineup[] to Ms. Bobbitt.

....

16. Det. Canty did not know [the] suspect's identity when administering the ... lineup[]

....

18. Det. Canty provided the identification instructions and presented the photographs in a manner consistent with *the statute*.

(Emphasis added.) The trial court further documented as its two conclusions of law that when:

20. Viewing the totality of the circumstances, the identification procedure used was not so impermissibly suggestive as to create a substantial likelihood of irreparable misidentification; and

21. There is a reasonable probability that Ms. Bobbitt's observation of ... [D]efendant at the time of the alleged crime was sufficient for the subsequent identification of ... [him] during a photographic lineup.

Defendant contemporaneously objected to admission of this evidence at trial. After his conviction by the jury, Defendant timely appealed to this Court on 13 December 2023.

II. Jurisdiction

This Court has jurisdiction to hear Defendant's appeal because the trial court's entry of his guilty verdicts implicates the "final judgment of a superior court," N.C.G.S. § 7A-27(b)(1) (2023), for a defendant "who has been found guilty of ... crime[s]" despite his "plea of not guilty to [the] criminal charge[s], *id.* § 15A-1444(a).

III. Analysis

On appeal, Defendant argues that the trial court erred by denying his motion to suppress evidence of his lineup identification and by making insufficient findings of fact to support that denial as a conclusion of law. He further argues that the trial court plainly erred by allowing the investigating officer to offer lay testimony as to a third-party witness's credibility. For the reasons below, this Court finds no error on all three issues.

This Court reviews *de novo* the EIRA's applicability as matter of statutory interpretation. *State v. Simpson*, 906 S.E.2d 72, 78 (2024) (interpreting § 15A-284.52). If the EIRA applies and the trial court duly complied with its requirements, then this Court then reviews the court's suppression-motion denial only for "whether competent evidence supports . . . [it]s findings of fact" that, in turn, "support the conclusions of law." *State v. Biber*, 365 N.C. 162, 168–69 (2011). This Court only holds plain error where "a defendant [can] demonstrate . . . a fundamental error . . . at trial" so "prejudic[ial]" as to have "had a probable impact on the jury's" guilty verdict. *State v. Gamble*, 243 N.C. App. 414, 419 (2015) (quoting *State v. Lawrence*, 365 N.C. 506, 516, 518 (2012)).

A. EIRA Assessment

First, Defendant argues that the trial court erred by not expressly considering whether the Department had complied with the EIRA in administering the lineup identification. Despite the State's incorrect assertion of the Act's inapplicability here, Defendant cannot show noncompliance by either the trial court or the Department's

two detectives. The trial court properly documented its denial order and did not err by admitting Detective Braswell’s lay testimony. Thus, this Court finds no error in both the trial court’s motion-to-suppress denial and lay-testimony admission.

1. General Applicability

Contrary to the State’s argument on appeal, the EIRA applies to the facts in this case. The Act regulates any “photo lineup,” which it defines as a procedural display of “an array of photographs . . . to an eyewitness for the purpose of determining if . . . [she can] identify the perpetrator of a crime.” N.C.G.S. § 15A-284.52(a)(6) (2023). This Court traditionally incorporates legislative purpose to interpret the Act; however, it need not go that far because “[t]he first method of statutory interpretation, the plain meaning of the statute, . . . fully answer[s] the question here.” *State v. Morris*, 288 N.C. App. 65, 83, *appeal denied and dismissed mem.*, 891 S.E.2d 288 (N.C. 2023). Here, State’s Exhibit M3 shows the compilation of six “police mug shots” prepared by Detective Braswell that Detective Canty then “show[ed] sequentially” to the victim “for the purpose of identifying [her] perpetrator” prior to his actual arrest. *Photo Array*, *Black’s Law Dictionary* (12th ed. 2024). Both detectives and the victim testified to this effect on the stand. Thus, this Court holds the EIRA and its procedural requirements apply to this case.

2. Trial Court Compliance

The trial court complied with the EIRA in denying Defendant’s motion. Defendant seems to hinge his contrary assertion on the court’s admitted failure to

specifically identify N.C.G.S art. 14a in its denial order. N.C.G.S. § 15A-284.50 (2023) (“Article [14a] shall be called the ‘Eyewitness Identification Reform Act.’”). Whether a trial court’s order is ambiguous is a legal question reviewable *de novo*; however, the ultimate resolution of that ambiguity is a factual question left to the trial court’s sound discretion. *See Emory v. Pendergraph*, 154 N.C. App. 181, 185 (2002); *see also* 50 C.J.S. *Judgments* § 724, Westlaw (database updated Dec. 2024) (“A judgment is ambiguous when . . . capable of more than one reasonable interpretation.”). This Court resolves ambiguity in judicial orders by “adopt[ing] the interpretation . . . in line with the law applicable to the case” “in light of all relevant circumstances” at bar. *Faucette v. 6303 Carmel Road, LLC*, 242 N.C. App. 267 (2015). While “afford[ing] some degree of deference to the trial court’s interpretation” in this context, *id.*, relevant circumstances include “the pleadings, issues, [and] facts” documented in the record on appeal. *Reavis v. Reavis*, 82 N.C. App. 77, 80 (1986). “Against the backdrop of these legal principles,” this Court more generally “uphold[s] a trial court’s judgment if it is correct upon *any* theory of law.” *Farrington v. WV Invests., LLC*, 909 S.E.2d 495, 501 (2024) (quotation omitted).

Read alongside the contemporaneous transcript, the trial court here clearly intended in the courtroom for “the statute” to refer to the EIRA. In challenging Defendant’s suppression motion, the State noted how the detectives “read straight off of [§ 15A-284.52(b)] . . . for the[ir] [own] benefit” to ensure “identifi[cation] [of] the correct Jim Robinson.” Instead of deemphasizing the Act, Defendant’s counsel

implicitly conceded its applicability by responding with an attempted distinction of his client's identification from *Morris*—our recent case interpreting subdivision (b). When “construed in light of . . . what was before” the trial court, *Watkins v. Smith*, 40 N.C. App. 506, 510 (1979), its judgment clearly documents mandatory consideration of the possible “consequences of compliance or noncompliance,” N.C.G.S. § 15A-284.52(d). Thus, this Court holds that the trial court complied with the EIRA by denying Defendant's suppression motion, even if the written order itself did not show “the technical exactness which the precedents of records prescribe.” *White v. Creedy*, 2 Mur. 115, 116 (1812).

3. Police Compliance

Defendant also attacks the detectives' compliance with certain photo lineup procedures. Much like the trial court, both detectives complied with § 15A-284.52(b) in all constitutional and statutory respects. Among subdivision (b)'s numerous requirements, Defendant specifically challenges their adherence to sub subdivisions (4) and (5) on appeal. We review *de novo* a trial court's assessment of a lineup's constitutionality. *See Morris*, 288 N.C. App. at 76.

Section 15A-284.52(b) requires a “contemporary” “photograph of the suspect” that, “to the extent practicable, . . . resembles . . . [his] appearance at the time of the offense.” N.C.G.S. § 15A-284.52(b)(4). The composition of the photo lineup must have “[a]t least five [F]illers” that “generally resemble the eyewitness's description of the perpetrator” in a manner still “ensuring that . . . [he] does not unduly stand out” from

them. *Id.* § 15A-282.52(b)(4)–(5)(b). Our courts have long assessed both pre-and post-EIRA lineup compliance under the same overarching due-process framework. *See State v. Headen*, 295 N.C. 437, 439 (1978) (establishing two-step test of procedural constitutionality); *State v. Gamble*, 243 N.C. App. 414, 419–21 (applying *Headen* test to EIRA). Under that two-step *Headen* test, this Court looks to:

- (1) Whether law enforcement used “an impermissibly suggestive procedure . . . [to] obtain[] [an] out-of-court identification”; and
- (2) If so, whether the “suggestive procedure” induced in the witness “a substantial likelihood of irreparable misidentification.”

Headen, 295 U.S. at 439; *cf.* N.C.G.S. § 15A-1443(b) (distinguishing prejudicial error from error shown harmless “beyond a reasonable doubt”). This Court considers the second-step possibility of constitutionally irreparable misidentification “[o]nly if the procedures were impermissibly suggestive” in the first place. *State v. McCree*, 160 N.C. App. 19, 24 (2003). To avoid impermissible suggestion, the investigators must fairly administer the lineup in a manner that “do[es] nothing to induce the witness to select one participant rather than another,” *State v. Grimes*, 309 N.C. 606, 610 (1983)—*i.e.*, in accordance with the EIRA’s statutory procedures.

After reviewing the record here, nothing shows either Detective Braswell or Detective Canty improperly induced Bobbitt to identify Defendant on the grounds of sub-subdivisions (4) and (5) that he raises on appeal. Detective Braswell selected a “contemporary” photograph of Defendant that “practicabl[y] . . . resemble[d] . . . [his] appearance as the time of the offense,” N.C.G.S. § 15A-282.52(b)(4), by “select[ing]

the most recent one from the date of the incident” with the victim. Furthermore, the other “five [F]illers . . . included in [the] photo lineup,” *id.* § 15A-282.52(b)(5)(b), each “practicabl[y]” “resemble . . . [Bobbitt’s] description of [Defendant] in [his] significant features,” *id.* § 15A-282.52(b)(5)(a). Filler #4 may be the only one not “heavyset” among the six, but his skin tone substantially matches Defendant’s own. So too with Filler #6, who matches Defendant’s approximate weight despite a lighter skin tone.

In challenging these specific Fillers relative to himself, Defendant inverts the first of the EIRA’s two procedural mandates regarding lineup arrangement and visualization. A photo-lineup administrator must “ensure that the *suspect* does not unduly stand out from the [F]illers,” not ensure that each *Filler* avoid any distinguishing characteristic from Defendant whatsoever. *Id.* § 15A-282.52(b)(5) (emphasis added). Were we to hold otherwise, then “only [Fillers] . . . identical in appearance” could pass appellate muster. *State v. Tutt*, 171 N.C. App. 518, 525 (2005). Thus, because Detectives Braswell and Canty did not impermissibly suggest Defendant’s identity to Bobbitt in administering the photo lineup, this Court finds no error in the trial court’s holding that the detectives complied with the EIRA.

B. Insufficient Findings

Second, Defendant argues that the trial court erred by making insufficient findings of fact to support its conclusions of law that the photo lineup did not impermissibly suggest his identification to Bobbitt. As noted above, we review a denial of a suppression motion for whether competent evidence supports an order’s

findings of fact that, in turn, support its derivative conclusions of law. *See State v. Malone*, 373 N.C. 134, 145 (2019). Because the trial court’s findings are sound on this basis and its conclusions are sound for those bases discussed above, this Court hold that it did not err in reaching either.

Under N.C.G.S. § 15A-974, a trial court must “make findings of fact and conclusions of law” when “determin[ing] whether” unlawfully obtained “evidence sh[ould] be suppressed.” N.C.G.S. § 15A-974(b) (2023). As “developed by case law over . . . time,” *id.* § 15A-974 off. cmt’y, however, our courts have interpreted this mandate to implicate only a “conflict in the evidence” so material as to “potentially affect[] the outcome of the suppression motion.” *State v. Bartlett*, 368 N.C. 309, 312 (2015).

No such conflict exists here because Defendant also misinterprets the EIRA’s second Filler-resemblance requirement. Defendant’s photo must “contemporar[ily] . . . resemble . . . [his] appearance at the time of the offense.” N.C.G.S. § 15A-974(b)(4). The Fillers, by contrast, must “generally resemble” “as much as practicable” Bobbit’s “*description of . . . [Defendant] in significant features*” at that same time. *Id.* § 15A-974(b)(5), (5)(a) (emphasis added). In other words, the Fillers must adhere to the victim’s *subjective* assessment of the perpetrator’s appearance, not an objective description a reasonable person might otherwise discern.

Considering that distinction, the trial court properly documented those facts that speak to Bobbitt’s subjective description of Defendant as of the crime itself. The trial court supported its conclusion of her capacity to identify him by documenting

“some lighting” that could illuminate his “eyes or nose[].” This ambient lighting, in turn, allowed her “a good opportunity to view her assailant[s].” Their visible “eyes [and] noses” would certainly be the sort of “significant features” that the EIRA contemplates. *Id.* § 15A-974(b)(5)(a). The use of a bandana to “cover[] their mouths, but not their eyes or noses” implies additional visibility of Defendant’s shaved head, yet another “significant feature” reflected in all six Fillers. *Id.* Filler #4 and Filler #6’s lighter weight and complexion, respectively, may be conflicting evidence. *See Bartlett*, 368 N.C. at 312. But their mutual baldness and distinctive stares are also competent supporting evidence. Thus, this Court finds no prejudicial error in the trial court’s mutually supportive findings of fact and conclusions of law.

C. Lay-Testimony Admission

Third, Defendant argues that the trial court plainly erred in admitting certain portions of Detective Braswell’s testimony that allegedly vouched for Lofton’s personal credibility—an issue left to the jury. We review an admission of lay-opinion testimony only for a trial court’s abuse of discretion. *State v. Belk*, 201 N.C. App. 412, 417 (2009). Because the challenged testimony spoke to Detective Braswell’s “basis for believing” Lofton “in the course of [his] investigation” and not to her personal credibility as a witness, the trial court did not err in admitting his testimony. Thus, this Court finds no error.

Under North Carolina Rule of Evidence 701, a non-expert (*i.e.*, lay) witness may only offer testimonial “opinions or inferences” (1) “rationally based on [his own]

perception and” (2) would help the jury more “clear[ly] understand[] . . . his testimony or . . . determin[e] . . . a fact in issue.” A permissible lay opinion may include testimony “as to why [a detective] made certain choices in the course of an investigation, including [his] basis for believing a particular witness.” *State v. Aguilar*, 292 N.C. App. 596, 602 (2024) (citing *State v. Taylor*, 238 N.C. App. 159, 168–69 (2014) (Bryant, J., dissenting), *rev’d per curiam on grounds of dissent*, 368 N.C. 300 (2015)).

State v. Westall, 116 N.C. App. 534 (1994), is particularly instructive here. There, the defendant challenged multiple procedural aspects of his armed-robbery trial, which resulted in a guilty verdict. *Id.* at 538. Most relevant here, the defendant challenged the arresting detective’s testimony as to “why [the detective] believed” that the defendant’s accomplice “was more involved in the robbery than . . . [he] had [previously] admitted.” *Id.* at 546. In response to questioning about his departure from “his usual procedure” in not taking certain notes, the detective stated that he “thought [the accomplice] was lying” because “his interview of [the accomplice’s] sister led him to doubt” their official story. *Id.* This Court rejected the defendant’s Evidence Rule 701 claim, reasoning that the detective “expressed a lay opinion . . . rationally based on his own firsthand . . . observations . . . [and] helpful to explain his earlier testimony” regarding his lack of investigatory notes.

The State here similarly adduced Detective Braswell’s testimony as to why he never charged Lofton as an accomplice in Defendant’s robbery. As noted in pre-trial

proceedings, both the trial court and Defendant’s counsel anticipated that “some of the questioning w[ould] potentially . . . subject[] [Lofton] to criminal charges should the State choose to proceed” with *voir dire*. It stands to reason that the State would seek to prevent the jury *qua* factfinder from reaching a similar conclusion during the trial. Much like the detective in *Westall*, Detective Braswell offered his opinion of Lofton’s story to explain why he had declined to charge her as an accomplice, not to “vouch[] for [her] credibility [as] a trial witness.” *Taylor*, 238 N.C. App. at 169. Thus, this Court holds that the trial court did not plainly err in admitting Detective Braswell’s testimony.

IV. Conclusion

For the reasons above, this Court holds that the trial court did not (1) err by complying with EIRA procedures, (2) prejudicially err by documenting sufficient findings of fact to support its conclusions of law in the motion-to-suppress denial, or (3) plainly error by admitting Detective Braswell’s lay-opinion testimony.

NO ERROR.

Judges TYSON and WOOD concur.

Report per Rule 30(e).