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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-611

Filed 15 July 2026

New Hanover County, Nos. 20CR057069-640, 20CR057070-640

STATE OF NORTH CAROLINA

v.

FREDDIE ANTHONY JACKSON, Defendant.

Appeal by defendant from judgment entered 11 August 2023 by Judge G. Frank Jones in New Hanover County Superior Court. Heard in the Court of Appeals 20 May 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Heidi M. Williams and Solicitor General Fellow, Trey A. Ellis, for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

DILLON, Chief Judge.

Defendant Freddie A. Jackson was convicted in 2023 for crimes committed in 1995. Defendant challenges the admission of certain DNA evidence, contending the evidence was admitted in violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution. For the foregoing reasoning, we

conclude Defendant received a fair trial, free from reversible error.

I. Background

The State's evidence tended to show the following:

In the early morning hours of 2 September 1995, while the victim worked at a Wilmington convenience store, Defendant raped, sexually assaulted, kidnapped, and robbed the victim.

Shortly after the assault, the victim was transported to the New Hanover County Medical Center where a nurse completed a sexual assault kit on the victim. Years later, our State Crime Lab contracted with a private lab to analyze the victim's untested vaginal swabs contained in the sexual assault kit. Following this, the Wilmington Police Department received a lab report from the private lab showing the vaginal swabs taken from the victim matched Defendant's DNA.

A jury eventually found Defendant guilty of two counts of first-degree rape, two counts of first-degree sex offense, one count of first-degree kidnapping, and one count of robbery with a dangerous weapon. Defendant appeals.

II. Analysis

On appeal, Defendant argues the trial court erred by admitting the testimony of a third-party DNA analyst from the private lab and the accompanying lab report in violation of the right to confrontation guaranteed by the Sixth Amendment of the

United States Constitution (the “Confrontation Clause”). Defendant notes the testifying analyst based her testimony on lab work performed by other analysts.

We agree, however, with the State that Defendant did not properly preserve his argument regarding the analyst’s testimony *on constitutional grounds*. See *State v. Lloyd*, 354 N.C. 76, 86-87 (2001) (“Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal.”). Specifically, it appears Defendant, through counsel, limited his objection on Rule 702 grounds, that the reliance by the testifying analyst on the report of another analyst was not of the type typically relied upon by experts in forming their opinion. Further, the record does not show Defendant obtained a ruling on his objection *based on constitutional grounds*, as the trial court only overruled Defendant’s objection on Rule 702 grounds.

Specifically, in 2013 our Supreme Court held generally the expert testimony by an analyst who relies on analysis performed by another analyst generally does not violate the Confrontation Clause, as such information is of the type reasonably relied upon by said testifying analyst. *State v. Ortiz-Zape*, 367 N.C. 1, 13 (2013). However, in 2024, after the trial of this current matter, our United States Supreme Court held that such reliance by a testifying analyst implicates the Confrontation Clause where the report being relied upon contains the testimonial hearsay of the non-testifying analyst who performed the lab work. *Smith v. Arizona*, 602 U.S. 779 (2024).

At trial, Defendant’s counsel initially objected “for substitute analyst purposes. It would be the *Ortiz-Zape* line of cases. It’s my request to voir dire this witness to

ensure that she's not a substitute analyst." However, after conducting a voir dire examination of the analyst, Defendant's counsel clarified the objection was not based on the Confrontation Clause but rather on a belief the analyst was relying on data which was not of the type reasonably relied upon by others in her field:

I think the issue here is we don't know if this is the data that experts in this field reasonably rely upon. And the reason we don't know that is she's not proficient or up-to-date in the methodologies that gather this data. I think it's different than the other substitute analyst cases that we have on record because those attach the surrogate testimony. I don't think this is surrogate testimony. I think that we cannot be assured under [Rule of Evidence] 702 and the [C]onfrontation [C]lause that the facts she relied upon in reaching her opinion are those that are reasonably relied upon in the field of forensics.

Further, the trial court based its ruling on Defendant's objection only on the basis of Rule 702, and not based on the Confrontation Clause, concluding in overruling Defendant's objection, that "[i]n the exercise of discretion, I do respectfully find that the information prepared by third parties is of the type reasonably relied upon by experts in the field." Assuming Defendant properly objected, at least in part, based on the Confrontation Clause, it is apparent from the record that Defendant failed to obtain a ruling from the trial court on his constitutional objection. Therefore, he has waived appellate review of this issue. N.C. R. App. P. 10(a)(1).

Defendant, though, asks that we review for plain error. To meet the burden of showing plain error, Defendant must show that (1) a fundamental error occurred at trial; (2) that the jury probably would have returned a different verdict, but for the

error; and (3) the error is an “exceptional case” that warrants plain error review. *See State v. Reber*, 386 N.C. 153, 158 (2024).

We conclude the trial court did not commit plain error based on the other evidence of Defendant’s guilt before the jury. That is, assuming a fundamental error occurred when the trial court allowed the analyst to testify, Defendant has failed to show that the jury probably would have rendered a different verdict had they not heard that testimony. For instance, the jury heard from *another* DNA analyst (from the State Crime Lab) who testified and produced a report showing that DNA from a vaginal swab of the victim matched Defendant’s DNA. Defendant did not properly object to this testimony. *See State v. Ray*, 364 N.C. 272, 275 (2010) (holding that generally a party must object when the evidence is actually introduced at the trial). Further, the jury heard evidence that Defendant’s palm print was found on a cigarette pack retrieved from behind the counter at the convenience store immediately following the assault. Also, the jury heard evidence that Defendant had committed similar assaults at Wilmington convenience stores around the same time period.

Accordingly, because Defendant has failed to show prejudice, we conclude Defendant received a fair trial, free of reversible error.

NO ERROR.

Judge HAMPSON concurs.

Judge ARROWOOD concurs in result only.

STATE V. JACKSON

Opinion of the Court

Report per Rule 30(e).