IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1139

Filed 18 November 2026

Sampson County, No. 20CR051164-810

STATE OF NORTH CAROLINA

v.

TERRANCE LASHAUN SIMMONS

Appeal by Defendant from judgment entered 12 July 2024 by Judge Jessica Locklear in Sampson County Superior Court. Heard in the Court of Appeals 16 September 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Jesse Ramos, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Anne M. Gomez; and John T. Stanford, for Defendant.

WOOD, Judge.

Terrance Simmons ("Defendant") appeals from a 12 July 2024 judgment entered following a jury verdict of guilty of intent to sell and deliver cocaine and habitual felon. On appeal, Defendant asserts the trial court erred when it: (1) denied Defendant's motion to dismiss for insufficiency of the evidence and (2) admitted a photograph taken on 23 June 2020 of Defendant. After careful review of the record,

we conclude that Defendant received a fair trial free from error.

I. Factual and Procedural Background

On 31 December 2019, Deputy Brandon Pope ("Deputy Pope"), a Sampson County Sheriff's Office narcotics agent, and three other officers conducted an undercover operation to purchase cocaine. The officers conducted this operation with the help of a confidential informant ("Informant"). Prior to carrying out the operation, Deputy Pope testified he searched Informant for any drugs, weapons, money, or anything not allowed by the Sheriff's Office during an operation. Similarly, with Deputy Pope present, Deputy Dewayne Barber ("Deputy Barber") searched Informant's vehicle. Neither deputy found anything on Informant's person or in his vehicle that was not allowed during the operation.

After searching Informant, Deputy Pope and Deputy Barber gave him an audio and video recorder to carry out the operation. The audio and video recorder transmitted live audio, video, and GPS information to the deputies. The audio and video recorder allowed the deputies to keep Informant under surveillance throughout the operation.

Along with the recorder, Deputy Pope gave Informant $120.00 to make the purchase for the controlled substance. The deputies followed Informant to Clive Jacobs Road in Sampson County and watched him turn onto Cranberry Lane, a dead-end road at 2:59 p.m. The deputies did not turn onto the dead-end road but instead followed Informant's location using the live GPS signal. A video recording shows the

drug purchase between Informant and Defendant. Defendant's face appears briefly in the video for several seconds.

At approximately 3:05 p.m., Informant left Cranberry Lane and returned to the secure meeting location with the officers at 3:17 p.m. The deputies kept Informant under surveillance through the GPS signal. Upon returning to the secure meeting location, Deputy Pope turned off the recording device and once again searched Informant's car and person. Deputy Pope did not preserve the GPS data. Informant turned over "a white-bluish, rock-like substance with green vegetable matter inside of it." Deputy Pope paid Informant $100.00 for his work. Deputy Pope sent the substance to the State Crime Lab, which determined the white-blue substance to be cocaine.

On 23 June 2020, approximately six months after the undercover operation, Deputy Pope arrested Defendant and photographed him. On 31 August 2020, a Sampson County Grand Jury indicted Defendant on one count of possession with intent to manufacture, sell, and deliver cocaine and one count of selling and delivering cocaine, both in violation of N.C. Gen. Stat. § 90-95(a)(1). The grand jury also indicted Defendant as a habitual felon.

At trial, the State attempted to question Deputy Pope about the target of the undercover operation, but the trial court sustained Defendant's objection because Informant was not there to testify. The trial court allowed the video of the undercover operation to be played for the jury without audio at the request of Defendant due to

confrontation and hearsay concerns. Deputy Pope attempted to identify Defendant based on the video but misidentified him at first. The trial court ultimately sustained an objection to Deputy Pope's identification testimony due to lack of foundation.

On direct examination, the State questioned Deputy Pope about the events of 23 June 2020 and asked if he had "come into contact with the defendant in this case, Mr. Simmons?" Defendant objected to this line of questioning and, outside the presence of the jury, argued that this line of questioning would allow Deputy Pope to testify about the photo being a mugshot and the State to submit the photo into evidence. The State responded that it would not ask any questions about why or where contact occurred, just if Deputy Pope "came into contact with" Defendant on that day and if the photograph was a fair and accurate representation of the way Defendant appeared on 23 June 2020. Defendant contended that more details may be elicited through the testimony and that the State was trying to convict Defendant "for something that they don't have evidence tying him to simply by having arrested him for it," arguing it would violate the due process clause of the U.S. Constitution. The trial court ultimately overruled Defendant's objection.

Deputy Pope then testified that on 23 June 2020 he had "occasion to come into contact with" Defendant and that a photograph was taken of Defendant. Deputy Pope testified that the photo was a representation of the way Defendant appeared to Deputy Pope on 23 June 2020 and that the photograph helped illustrate his testimony for the jury. The photograph taken on 23 June 2020 is a close-up photograph of

Defendant's face with a plain background and no writing or any other information on the photograph.

The State made a motion to admit the photograph into evidence for illustrative purposes. Defendant objected and argued that the photograph was not relevant to the current case and that its probative value was not high enough to outweigh the substantial risk of unfair prejudice. The trial court overruled Defendant's objection and allowed the photograph to be admitted into evidence. The trial court instructed the jury that some photographs were introduced into evidence for the purpose of illustrating and explaining the testimony of the witnesses. The trial court instructed the jury that they could not consider those photographs for any other purpose.

At trial, the State submitted into evidence photos of the controlled substance secured during the undercover operation, the chain of custody report, and the State Crime Lab Report. The State also submitted into evidence the recording (without audio) of the undercover operation, two still photographs of Defendant taken from the recording, and the photograph taken of Defendant on 23 June 2020.

After the close of the State's evidence, Defendant made a motion to dismiss for insufficiency of the evidence. The trial court denied Defendant's motion.

The jury found Defendant guilty of possession with intent to sell and deliver cocaine and of being a habitual felon. The jury found Defendant not guilty of selling and delivering cocaine. The trial court sentenced Defendant to 68 to 94 months of imprisonment. Defendant appealed.

II. Analysis

On appeal, Defendant asserts the trial court erred when it: (1) denied Defendant's motion to dismiss for insufficiency of the evidence and (2) admitted a photograph of Defendant taken on 23 June 2020.

A. Defendant's Motion to Dismiss for Insufficiency of the Evidence

Defendant argues the trial court erred when it denied Defendant's motion to suppress for insufficiency of evidence that Defendant was the perpetrator of the crime. We disagree.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citing *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982)).

"In order to justify the denial of a motion to dismiss for insufficient evidence, the State must present substantial evidence of (1) each essential element of the charged offense and (2) defendant being the perpetrator of such offense." *State v. Privette*, 218 N.C. App. 459, 470–71, 721 S.E.2d 299, 308 (2012) (quotations, citation, and alterations omitted). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Id.* at 471, 721 S.E.2d at 308 (quoting *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980)). When reviewing a motion to dismiss based on insufficiency of the evidence, this Court must view the evidence in the light most favorable to the State, giving the State the

benefit of all reasonable inferences." *State v. Bullock,* 178 N.C. App. 460, 466, 631 S.E.2d 868, 873 (2006), *disc. review denied*, 361 N.C. 222, 642 S.E.2d 708 (2007).

In the case *sub judice*, Defendant was charged with selling and delivering cocaine; possession with intent to sell, manufacture, and deliver cocaine; and being a habitual felon. Defendant contends the trial court erred in denying his motion to dismiss for insufficient evidence that he was the perpetrator of these crimes.

The State's evidence that Defendant was the perpetrator included the 31 December 2019 undercover drug buy video, two still photographs from the drug buy video, and a photograph taken of Defendant on 23 June 2020. Further, the State presented Deputy Pope and Deputy Barber as witnesses who testified as to carrying out the undercover operation, hiring Informant, and recovering the controlled substance bought during the undercover operation.

Defendant argues that there was insufficient evidence that he was the perpetrator because no trial witness positively identified Defendant in the 31 December 2019 video nor was there testimony at trial from someone who personally witnessed the undercover drug buy. However, Defendant has failed to cite case law from any jurisdiction in support of this argument. The standard rules of appellate procedure require that "[t]he body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies." N.C. R. App. P. 28(b)(6) (2005).

Notably, this Court has rejected a similar argument. In *State v. Young*, the defendant argued that photo evidence from a lineup was plain error because without the photos, the jury likely would have reached a different conclusion. *State v. Young*, 248 N.C. App. 815, 822-23, 790 S.E.2d 182, 188 (2016). The defendant in *Young* made a similar argument to the one Defendant posits in this case, namely that the photos were "'irrelevant and inadmissible as substantive evidence' where 'no witness with knowledge testified that [defendant] was in fact the person depicted in photo 2 or 5.'" *Id.* at 823, 790 S.E.2d at 188. This court deduced that the defendant in *Young* was asking for the court to require lay opinion testimony to identify the person in the photographs. *Id.* at 826-827, 790 S.E.2d at 190. This Court held that even though no witnesses testified as to the identity of the person in the photographs, it did not make them inadmissible at trial because the jury could draw their own conclusions based on the evidence. *See Id.*

In the present case, Defendant similarly suggests that because no witness positively identified Defendant in the photograph or undercover buy video, then there is insufficient evidence as to him being the perpetrator of the crime. However, the jury can look at the photographs and look at the defendant sitting in the courtroom and draw their own conclusions about whether the defendant is the person depicted in the photos. The trial court did not err by denying Defendant's motion to dismiss because the photograph and Defendant's presence in the courtroom was sufficient evidence for the jury to consider whether Defendant was the perpetrator of the crime.

Defendant also asserts the trial court erred by denying his motion to dismiss because it resulted in an inconsistent jury verdict since the jury found Defendant guilty of possession with intent to sell and deliver cocaine but found him not guilty of selling and delivering cocaine. Defendant contends that this verdict "demonstrates weakness in the evidence" and shows the jury was doubtful that Defendant was the perpetrator.

Defendant's argument falls short. Defendant was convicted of the lesser offense of possession with intent to sell and deliver cocaine but found not guilty of the elevated offense of selling and delivering cocaine. Our Courts have upheld that where there is sufficient evidence to support a verdict, "mere inconsistency will not invalidate the verdict." *State v. Mumford*, 364 N.C. 394, 398, 699 S.E.2d 911, 914 (2010) (citation omitted). Usually, when a defendant makes an inconsistent verdict argument, it is because the jury returned a guilty verdict for the greater offense while acquitting defendant of the lesser offense. *See State v. Sigmon*, 190 N.C. 684, 690-91, 130 S.E. 854, 857 (1925); *see also Mumford*, 364 N.C. at 400, 699 S.E.2d at 915. However, here, Defendant was found guilty of the lesser offense and acquitted of the greater. Defendant's argument fails because there is no inconsistency – they are not legally contradictory nor are they mutually exclusive. *See Mumford*, 364 N.C. at 400, 699 S.E.2d at 915 (explaining that a mutually exclusive verdict establishes that the defendant is guilty of two separate, distinct offenses but where the guilt of one

excludes guilt of the other offense). Here, there was sufficient evidence to support the guilty verdict.

We conclude the State, based on the 31 December 2019 video recording, the still photos of the undercover drug purchase, and the 23 June 2020 photograph, presented sufficient evidence from which a reasonable jury could find Defendant was the perpetrator of the crime. Thus, the trial court did not err by denying Defendant's motion to dismiss.

B. Admittance of the 23 June 2020 Photograph

Defendant next contends the trial court erred when it admitted the 23 June 2020 photograph of Defendant in that the prejudice outweighed its probative value. We disagree.

A trial court's decision to admit or exclude evidence under Rule 403 is reviewed for abuse of discretion. *State v. Bynum*, 111 N.C. App. 845, 849, 433 S.E.2d 778, 781 (1986) (citation omitted). The trial court abuses its discretion where its ruling "was so arbitrary that it could not have been the result of a reasoned decision." *State v. Jones*, 151 N.C. App. 317, 325, 566 S.E.2d 112, 117 (2002) (citation and quotation marks omitted). "A piece of evidence does not have to positively identify the perpetrator to be relevant to the issue of identity." *State v. Carpenter*, 232 N.C. App. 637, 642, 754 S.E.2d 478, 482 (2014). After the trial court determines whether evidence is relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." N.C. Gen. Stat. § 8C-1, Rule 403.

Defendant argues the trial court abused its discretion by admitting the 23 June 2020 photo of Defendant because the probative value was substantially outweighed by the danger of unfair prejudice to him. Defendant argues the photograph is unfairly prejudicial because it appears to be a police booking photograph and allows the jury to draw that inference.

In arguing the photo is unfairly prejudicial, Defendant relies on *State v. Joyner*, in which this Court recognized that "admitting into evidence a 'mug shot' photograph indicating that a defendant had previously been in police custody may indeed be error." *State v. Joyner*, 167 N.C. App. 635, 637, 606 S.E.2d 196, 198 (2004) (citing *State v. Segarra*, 26 N.C. App. 399, 402–03, 216 S.E.2d 399, 402–03 (1975)). In *Joyner*, this Court acknowledged that admitting a "mug shot" may be error but determined that any error was harmless when witness testimony positively identified the defendant as the perpetrator of the crime through detailed testimony. *Joyner*, 167 N.C. App. at 637, 606 S.E.2d at 198 (citing *Segarra,* 26 N.C. App. at 402–03, 216 S.E.2d at 402–03). Defendant argues this Court should determine that the trial court erred in admitting the photograph of Defendant because the jury could infer the photograph was a mugshot and no one positively identified Defendant through witness testimony. We are unpersuaded.

The 23 June 2020 photograph is a photo of Defendant, expressionless and staring straight into the camera with a face mask lowered under his chin, with a plain background behind him. There is nothing in the photograph to suggest it is a

mugshot or booking photograph. Our Courts have held that a mug shot photograph with no marking or covered markings is not prejudicial. *See State v. Hatcher*, 277 N.C. 380, 387-89, 177 S.E.2d 892, 897-899 (1970), *overruled on other grounds by State v. Hurst*, 320 N.C. 589, 593, 359 S.E.2d 776, 778-79 (1987) (holding that a mug shot photograph of the defendant was properly admitted to illustrate the testimony of a witness where the words "Greensboro Police Department" and the date "11/67" were covered prior to its admission.). *Compare State v. Young*, 60 N.C. App. 705, 708 299 S.E.2d 834, 836 (1983) (Where nameplate, identification number, and inscription on mug shots were covered before they were received into evidence and shown to the jury, the mug shots were properly admitted to illustrate testimony of identifying witnesses) *with State v. Cauthen*, 18 N.C. App. 591, 594-95, 197 S.E.2d 567, 569 (1973) (holding that an unexpunged photograph of the defendant which depicted a front view and a side view of the defendant along with a caption stating, "N.C. PRISON-RALEIGH" and other booking information was harmless error). Here, because of the plain nature of the 23 June 2020 photograph, the danger of unfair prejudice does not substantially outweigh the photograph's probative value.

However, assuming *arguendo* that there was prejudice, any prejudice was minimized by the trial court's jury instructions. *See Joyner*, 167 N.C. App. at 637, 606 S.E.2d at 198 ("Moreover, prejudice to a defendant is minimized where the trial court gives a limiting instruction as to the photograph."). Prejudice is minimized because a jury is presumed to follow the instructions given by the trial court. *State*

v. Prevatte, 356 N.C. 178, 254, 570 S.E.2d 440, 482 (2002) (citing *State v. McCarver*, 341 N.C. 364, 384, 462 S.E.2d 25, 36 (1995), *cert. denied,* 517 U.S. 1110, 116 S.Ct. 1332, 134 L.Ed.2d 482 (1996)). Here, the trial court instructed the jury that some photographs were introduced into evidence for the purpose of illustrating and explaining the testimony of the witness. Further, the trial court instructed the jury they could not consider the photographs for any other purpose. Defendant argues that the photo itself, along with the lack of identification of Defendant by a witness, heightens prejudice. However, the jury instruction diminished any danger of unfair prejudice that would have otherwise substantially outweighed the probative value of the photograph.

Because the probative value of the 23 June 2020 photograph of Defendant is not substantially outweighed by the danger of unfair prejudice, the trial court did not abuse its discretion in admitting the photograph.

III. Conclusion

Upon careful review, we conclude that the trial court did not err when it denied Defendant's motion to dismiss or when it admitted the 23 June 2020 photograph of Defendant into evidence. We hold Defendant received a fair trial free from error.

NO ERROR.

Judges HAMPSON and GRIFFIN concur.