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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2025-000815

THE STATE,

Respondent,

v.

DYSHAWN TITUS HINES

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse her discretion in admitting Karim Hampton's identification of Appellant because the lineup procedure was not unduly suggestive pursuant to *Neil v. Biggers*.

STATEMENT OF THE CASE

Appellant was indicted in July of 2024 for two counts of attempted murder. Appellant proceeded to a jury trial from April 7-11, 2025, in Lexington County before the Honorable Diane Schafer Goodstein. Appellant was tried jointly with two co-defendants, Altariq Cole and Vernon Jenkins. The jury found Appellant guilty of both charges. He was sentenced to thirty years' imprisonment for each count of attempted murder. This appeal follows.

STATEMENT OF FACTS

On February 20, 2023, a shooting occurred outside the Country Inn and Suites on Piney Grove Road in Lexington County. (Tr. 288, 294-296, 309, 345-347). Kenneth Washington and Tyreka Cain were in the backseat of Washington's white Honda Accord in the hotel parking lot when a car and a black SUV pulled up close and blocked his vehicle. (Tr. 295-300, 352-361). Three to four people jumped out of the vehicles, surrounded the car, and began ordering Cain and Washington out of the car. (Tr. 356-358). Washington attempted to reach to the front to start his vehicle when shots were fired and he was hit multiple times. (Tr. 360). Washington was able to get his own gun and fire off one shot in an attempt to scare the shooters away. (Tr. 360-361).

Multiple people called 911, one of which was able to provide dispatch with the tag number of the car he observed speeding out of the parking lot. (Tr. 345-347). Stephanie Cobb with Lexington County Sheriff's Department was able to determine that the license plate was associated with a light-colored sedan owned by Karim Hampton and Kendra Bryant. (Tr. 788). Cobb made contact with Hampton about a month later and he told her that he had been dropping off a Lyft at that location and he heard gunshots and sped out of there. (Tr. 790). Cobb then met with Hampton in person where he explained what his involvement was and that he wanted to be honest with her. (Tr. 792). Hampton testified to the story he confessed to Cobb at trial.

He testified that the evening of the shooting, Vernon Jenkins, whom Hampton knew from growing up in New Jersey, contacted him and asked him to meet up. (Tr. 556-559). Hampton stated that he met up with Jenkins and three other guys, who were in a black SUV. (Tr. 560). Hampton stated that Jenkins introduced two of the three men as Riq and Body. Hampton testified that he was familiar with Riq because he was also from New Jersey, and they grew up in the same neighborhood. (Tr. 561). Hampton testified that he learned from Jenkins that Hines had been robbed by a guy called Gang and Jenkins was seeking Hampton's help in finding Gang or a woman

with whom he was associated with. (Tr. 562-564). Jenkins got into the vehicle with Hampton and Riq drove in the black SUV, both looking for a hotel for the men to stay at while they were in town. (Tr. 564-566).

They all eventually went to the Country Inn and Suites. (Tr. 566). Hampton testified that when they got to the hotel, Jenkins thought he saw a car that Body had told him “the guy” might be driving, and Jenkins told Hampton to pull behind the white car. Then the black SUV pulled in past them. (Tr. 568-571). Hampton testified that everyone but him got out of the two vehicles, looked at the vehicle, and then began shooting into the car. (Tr. 572-574). Hampton testified that he tried to leave as they were shooting but Body and Jenkins jumped in his car. (Tr. 574-575). Hampton then drove them to a house that he assumed was Body’s house. (Tr. 576).

Additional evidence introduced at trial included forensic firearms evidence, cell phone mapping evidence, and incriminating cell phone related data. Expert testimony established that .40 caliber shell casings found at the scene were shot from a gun found during the search of Jenkins residence. (Tr. 448, 464-465). A .380 caliber shell casing was found at the scene and evidence was introduced that Cole attempted to sell a .380 caliber pistol used in the shooting afterwards. (Tr. 411-412, 443-445, 475-476, 665-671). Screen shots of the article regarding the shooting were found in Hines’s phone and in the search history after the incident occurred. (Tr. 716-721).

During the course of the trial, a Biggers hearing was held to determine if Hampton’s identification of Hines was admissible. (Tr. 535-545). Stephanie Cobb testified regarding Hampton’s out-of-court identification of Appellant. (Tr. 535-543). Cobb testified that Hampton told police one of the individuals shooting was called “Body” and that she obtained information to identify Body as Hines and prepared a photographic lineup that included Hines’s photo, to show

Hampton. Cobb testified that Hampton stated if he saw a photo he could point out the man introduced to him as Body. (Tr. 535-536).

Cobb testified that she requested the South Carolina Law Enforcement Division (SLED) to prepare a lineup for her to use. (Tr. 538). Before showing Hampton the lineup, Cobb told him that he would be shown photographs that may or may not depict the person being investigated. (Tr. 538). Cobb stated that Hampton identified the person in the lineup, number three, as Body from the night of the incident. (Tr. 539).

Defense counsel argued the procedure used when Hampton identified appellant as Body was impermissibly suggestive where Hampton had never described him physically and then was told to “pick out Body.” (Tr. 544) Counsel contended the lineup was unduly suggestive where three of the men shown in the photographic lineup were dark skinned when Hines was light skinned. (Tr. 544). The court found, based on the photographic lineup and Cobb’s testimony, there was nothing unduly suggestive and ruled identification was admissible. (Tr. 545).

STANDARD OF REVIEW

An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004) “Whether an eyewitness identification is sufficiently reliable is a mixed question of law and fact. State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000). “Generally, the decision to admit an eyewitness identification is in a trial judge’s discretion and will not be disturbed on appeal absent an abuse of discretion.” State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012).

ARGUMENT

The trial judge did not abuse her discretion in admitting Karim Hampton's identification of Appellant because the lineup procedure was not unduly suggestive pursuant to Neil v. Biggers.

Appellant argues the trial judge erred in admitting Karim Hampton's identification of Appellant. Specifically, Appellant argues neither Hampton nor any other eyewitness gave a physical description of Appellant and that police used an impermissibly suggestive procedure. Appellant's argument is invalid because the admissibility of an eyewitness's identification is within the discretion of the judge, a physical description is not required before giving a photo lineup, and the lineup procedure was not unduly suggestive.

Neil v. Biggers hearing

In Neil v. Biggers, the United States Supreme Court found that a court must review the totality of the circumstances to determine whether an identification is reliable. Neil v. Biggers, 409 U.S. 188, 93 S. Ct. 375, 34 L.Ed.2d 401 (1972). The factors to be considered in evaluating the likelihood of misidentification include: (1) the opportunity of the witness to view the accused; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Id.* "Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012). The purpose of these Biggers hearings is to determine whether an identification was unduly suggestive. "A criminal Appellant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken

identification.” State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004). “Generally, the decision to admit an eyewitness identification is in a trial judge’s discretion and will not be disturbed on appeal absent an abuse of discretion, or the commission of prejudicial legal error.” State v. Brown, 356 S.C. 496, 502, 589 S.E.2d 781, 784 (Ct. App 2003).

In this case, after the Biggers hearing, defense counsel argued that the lineup was overly suggestive because he was told “to pick out Body” from a lineup in which three of the six men are dark skinned and Appellant is light skinned, making it “unduly prejudicial to him to allow him to pick him out just based on Body.” (Tr. 544). The State argued that it was not overly suggestive as the lineup speaks for itself and Cobb testified that she didn’t suggest who to pick, she handed it to him, talked about his opportunity to interact with the person he knew as Body and then he made an identification. (Tr. 545). The trial judge denied the motion to suppress and exclude the identification stating, “I’ve looked at the lineup and listened to the testimony and what Sergeant Cobb has testified to is that the gentleman said if I saw him I could identify him. And I saw the lineup. I thought they were—the young men were very similar and – and based on the testimony presented I didn’t see anything unduly suggestive and would respectfully deny the motion to suppress and to exclude.” (Tr. 545).

Appellant argues that in the lineup half of the men look strikingly different in their skin tones, but that is not accurate. State’s Exhibit 68 is in black and white and the lighting and coloring in all the photos is very similar. (State’s Exhibit 68). In State v. Turner¹, our Supreme Court found a photo lineup was “not unduly suggestive...[d]espite the variation in the background colors” because the defendant d[id] not stand out in comparison with the other individuals in the lineup.” See Also State v. Stewart, 275 S.C. 447, 449-451, 272 S.E. 2d 628, 629-630 (1980) (rejecting all

¹ State v. Turner, 373 S.C. 121, 127-128, 644 S.E.2d 693, 697 (2007).

challenges by Appellant to the pretrial identification procedures used by the police even though among the other complaints, the Appellant was the only person placed in a physical lineup who had a beard.) In this case there are no drastic differences in the skin coloring or background coloring and all of the men look relatively similar.

Appellant further argues that it was also not a reliable identification based on the factors considered. Appellant argues that Hampton did not have a substantial opportunity to view Body because he met him for the first time on the evening of the incident very briefly and the only for a small amount of time when he was in his vehicle after the incident while Hampton was driving and therefore focused on the road and not on Body. (Initial Brief of Appellant pg. 8). In State v. Collier², this court admitted an identification where the witness observed for only 10 to 15 seconds and in the initial photo lineup he made a tentative selection. In this case, Hampton testified that he met Appellant at a gas station where it was well lit and he could fully observe him. Then he testified that Appellant was in his car while he drove from the incident on piney grove to Appellant's house off fish hatchery, which is approximately a 20-minute drive. While Hampton gave a pretty vague description of Appellant, stating that he was "short and had a candy corn shaped head" that is vastly different than giving an extremely detailed description and then choosing someone in the lineup that is nowhere close to that description. Finally, the testimony showed that at the time Hampton made his identification he was very certain of his choice.

Appellant also argues that the State offered little other evidence that pointed towards Appellant's guilt and that is certainly not true. The State offered evidence of Appellant's phone with messages that identify him as "Body", and that show search history after the incident specifically interacting with news articles about the incident. (Tr. 714-722). There were also

² State v. Collier, 421 S.C. 426, 807 S.E.2d 206 (Ct. App. 2017).

conversations regarding the robbery of Appellant and who did it with a picture of the intended victim. (Tr. 822-828). Therefore, even without the eyewitness identification of Appellant by Hampton, there was sufficient evidence to link Appellant and show his involvement in the incident. Therefore, the trial court's ruling should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

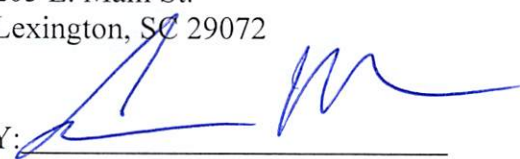
Respectfully submitted,

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