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NO. COA14-444  
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

STATE OF NORTH CAROLINA

v.

Guilford County  
Nos. 12 CRS 96238-40, 96242,  
96244, 96247, 13 CRS 24056

TYRELL LERON ANDERSON

Appeal by defendant from judgments entered 15 August 2013  
by Judge R. Stuart Albright in Guilford County Superior Court.  
Heard in the Court of Appeals 24 September 2014.

*Attorney General Roy Cooper, by Special Deputy Attorney  
General Kimberley A. D'Arruda, for the State.*

*Kimberly P. Hoppin for Defendant.*

ERVIN, Judge.

Defendant Tyrell Leron Anderson appeals from judgments  
entered based upon his convictions for four counts of robbery  
with a dangerous weapon, one count of first degree burglary, and  
one count of conspiracy to commit robbery with a dangerous  
weapon. On appeal, Defendant argues that the trial court erred  
by denying his motion to suppress evidence concerning a pre-  
trial identification of Defendant as the perpetrator of the

offenses for which he was convicted and by denying his motion to exclude the in-court identifications of Defendant made by certain of the State's witnesses. After careful consideration of Defendant's challenges to the trial court's judgments in light of the record and the applicable law, we conclude that the trial court's judgments should remain undisturbed.

I. Factual Background

A. Substantive Facts

On the evening of 28 November 2013, Christopher Wrenn was socializing with Defendant, Scotty Bratcher, Lamont Gilyard, and two individuals known as "BJ" and "JR." At some point, the men decided to "hit a lick," which meant that they intended to commit a robbery. As a result of the fact that Defendant had some marijuana that he wanted to get rid of and the fact that Mr. Wrenn knew a man named Dequell Exum, who had placed a call to Mr. Wrenn earlier in the evening inquiring about purchasing marijuana, the men decided to go to Dequell Exum's apartment, where Mr. Wrenn would knock on the door for the ostensible purpose of offering to sell marijuana. However, when the occupants of the apartment opened the door, the other men would enter the apartment behind Mr. Wrenn and commit the robbery.<sup>1</sup>

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<sup>1</sup>Mr. Wrenn and Mr. Gilyard testified at Defendant's trial pursuant to plea agreements under which they were to receive reduced sentences in exchange for their testimony.

At some point after midnight, Defendant, Mr. Wrenn, Mr. Gilyard, "BJ," and "JR" drove to Dequell Exum's apartment in Greensboro, where Dequell Exum lived with Kiera Mondareo Exum and Jamori Gatewood. At that time, Dequell Exum, Kiera Mondareo Exum, and Mr. Gatewood occupied the apartment along with John Smith and Donne' Wall, where they were socializing and smoking marijuana. After Mr. Wrenn knocked on the apartment door while the other participants in the planned robbery waited beside the apartment building, Dequell Exum answered the door and told Mr. Wrenn that he did not want to purchase any marijuana from him at that time.

As Mr. Wrenn turned to leave, Defendant, Mr. Gilyard, "JR," and "BJ" rushed into the apartment. At that time, "JR" had a rifle and "BJ" had a handgun. After the intruders entered the apartment, someone stuck a handgun in Dequell Exum's face and made him get down on the ground, where he was stepped on as he attempted to crawl away. Mr. Wrenn saw Defendant hit one of the occupants of the apartment who was trying to get out. In addition, Dequell Exum testified that Defendant was holding the rifle at some point during the commission of the robbery.

Mr. Wall was in a bedroom in the apartment when an individual armed with a black rifle entered the room, pointed the rifle at him, and instructed him to empty his pockets. At

trial, Mr. Wall identified the individual who engaged in these activities as Defendant, with this identification being based upon the assailant's dreadlocks and height.

An individual carrying a handgun came into Mondareo Exum's room, pointed the gun in his face, and told him to get on the floor. Subsequently, the intruders directed Mr. Wall, Mr. Smith, Dequell Exum, and Mondareo Exum to enter the bathroom and threatened to kill them. As this series of events occurred, Mr. Smith was hit in the face with the rifle and Mondareo Exum was kicked in the face. While he was in the bathroom with Mr. Wall, Mr. Smith, and Dequell Exum, Mondareo Exum saw an individual whom he identified at trial as Defendant holding a rifle.

Mr. Gatewood was sleeping in his bedroom when he awoke to the sound of people yelling about guns and money. After putting on his shoes, Mr. Gatewood jumped out of his bedroom window, which was only about three feet off of the ground, and ran down the street, where he found a campus security officer employed by North Carolina A & T University and told him what happened. By the time that Mr. Gatewood returned to the apartment with the officer, the intruders, who fled the apartment once they realized that Mr. Gatewood had escaped from his bedroom, were gone.

Mr. Wrenn testified that, although he left the apartment and was not present during the actual robbery, he saw "BJ" and Mr. Gilyard run out of the apartment with a pillowcase full of items. The perpetrators of the robbery left the area in which Dequell Exum's apartment was located in two different vehicles and reassembled at a friend's apartment, where they divided the property that had been taken during the robbery. A number of different items were taken from the apartment during the robbery, including laptops, cell phones, money, wallets, a watch, a pair of sunglasses, and two pairs of shoes.

B. Procedural History

On 30 November 2012, warrants for arrest were issued charging Defendant with five counts of robbery with a dangerous weapon and one count of conspiracy to commit robbery with a dangerous weapon. On 22 January 2013, the Guilford County grand jury returned bills of indictment charging Defendant with five counts of robbery with a dangerous weapon, one count of conspiracy to commit robbery with a dangerous weapon, and one count of first degree burglary.

On 18 July 2013, Defendant filed a motion seeking the entry of an order suppressing evidence that Dequell Exum had identified Defendant as one of the participants in the robbery in a pre-trial photographic lineup on the grounds that the

evidence in question had been obtained as the result of a violation of N.C. Gen. Stat. § 15A-284.52 and Defendant's due process rights under the federal and state constitutions. At the beginning of the trial, Defendant made a motion in *limine* seeking the entry of an order prohibiting certain of the State's witnesses from making in-court identifications of Defendant as one of the perpetrators of the robbery. The trial court denied both of Defendant's motions.

The charges against Defendant came on for trial before the trial court and a jury at the 12 August 2013 criminal session of the Guilford County Superior Court. At the close of the evidence, the trial court dismissed one of the robbery with a dangerous weapon charges. On 15 August 2013, the jury returned verdicts convicting Defendant of four counts of robbery with a dangerous weapon, one count of conspiracy to commit robbery with a dangerous weapon, and one count of first degree burglary. At the conclusion of the ensuing sentencing hearing, the trial court entered judgments sentencing Defendant to three consecutive terms of 60 to 84 months imprisonment based upon three of his convictions for robbery with a dangerous weapon and to a consecutive term of 60 to 84 months imprisonment based upon Defendant's consolidated convictions for one count of robbery with a dangerous weapon, conspiracy to commit robbery with a

dangerous weapon, and first degree burglary. Defendant noted an appeal to this Court from the trial court's judgments.

## II. Substantive Legal Analysis

### A. Suppression Motion

In his initial challenge to the trial court's judgments, Defendant contends that the trial court erred by denying his motion to suppress evidence to the effect that Dequell Exum had identified Defendant as one of the perpetrators of the robbery during a pre-trial identification procedure. More specifically, Defendant argues that the identification procedure during which Dequell Exum identified Defendant as one of the perpetrators of the robbery was not conducted in compliance with the Eyewitness Identification Reform Act and violated Defendant's state and federal due process rights on the grounds that the fillers used in the photographic lineup that was shown to Dequell Exum did not resemble the eyewitnesses' description of the perpetrator, that the photographic lineup was not conducted by an independent administrator, and that the photo of Defendant used in the lineup did not resemble Defendant's appearance at the time of the offense.<sup>2</sup> Defendant's arguments lack merit.

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<sup>2</sup>In Findings of Fact Nos. 21 and 22, the trial court found that Defendant did not assert any challenge to the denial of his suppression motion on the grounds that the photographic lineup was not conducted by an independent administrator and that the photograph of Defendant used in the lineup did not resemble

1. Evidence Admitted at the Suppression Hearing

On 3 December 2012, Dequell Exum went to the police station to look at a photographic lineup. Detective R.M. Mayo of the Greensboro Police Department, who served as the lead investigator with respect to this matter, prepared the photographic lineup that was presented to Dequell Exum. A photograph of Defendant was included in the lineup, along with five "filler" photographs. Detective Mayo believed that the photograph of Defendant that appeared in the photographic lineup accurately depicted Defendant's appearance at that time. In addition, Detective Mayo selected photographs of five individuals who had similar physical characteristics to Defendant for use in the photographic lineup as "fillers."

Detective Mayo asked Detective N.R. Ingram of the Greensboro Police Department to administer the photographic lineup to Dequell Exum given that Detective Ingram had never seen a photograph of Defendant. After placing each of the six

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Defendant as he appeared at the time of the robberies. As a result, the trial court summarily denied this aspect of Defendant's challenge to the admission of evidence concerning Dequell Exum's pre-trial identification of Defendant as one of the perpetrators of the robbery pursuant to N.C. Gen. Stat. § 15A-977. Although Defendant has challenged the trial court's decision with respect to these issues in his brief, we need not address this aspect of Defendant's challenge to the trial court's order given our decision to evaluate all of Defendant's challenges to the trial court's order on the merits based upon the trial court's alternative findings and conclusions.



photographs to be used in the photographic lineup in separate, numbered manila folders, Detective Mayo gave the folders to Detective Ingram and left the room. Although Detective Ingram knew that Defendant was the suspect in the robbery, he did not know which folder contained Defendant's photograph and could not see the photographs in the folders as Dequell Exum looked at them.

At the time that the photographic lineup procedure began, Detective Ingram read the standard instructions to Dequell Exum and presented each photograph to him individually. When Dequell Exum viewed the photograph in the fifth folder, he stated, "That's him. I'm 100 percent sure that's him." After viewing all of the folders a second time, Dequell Exum reiterated his selection of the fifth folder and stated that the individual depicted in the photograph contained in that folder "had the big gun" on the night of the robbery. Defendant's photograph was contained in the fifth folder.

## 2. Standard of Review

Appellate review of a trial court order denying a motion to suppress is "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the

judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). "The trial court's findings of fact on a motion to suppress 'are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.'" *State v. Williams*, 366 N.C. 110, 114, 726 S.E.2d 161, 165 (2012) (quoting *State v. Eason*, 336 N.C. 730, 745, 445 S.E.2d 917, 926 (1994), *cert. denied*, 513 U.S. 1096, 115 S.E.2d 764, 130 L. Ed. 2d 661 (1995)). "While the trial court's factual findings are binding if sustained by the evidence, the court's conclusions based thereon are reviewable *de novo* on appeal." *State v. Parker*, 137 N.C. App. 590, 594, 530 S.E.2d 297, 300 (2000) (citing *State v. Mahaley*, 332 N.C. 583, 592-93, 423 S.E.2d 58, 64 (1992), *cert. denied*, 513 U.S. 1089, 115 S. Ct. 749, 130 L.Ed.2d 649 (1995)).

### 3. Validity of Defendant's Challenges to the Suppression Order

#### a. Alleged Statutory Violations

In challenging the denial of his suppression motion, Defendant contends that a number of the trial court's findings of fact lack adequate evidentiary support and that the procedures used to conduct the lineup violated the Eyewitness Identification Reform Act. We do not find Defendant's argument persuasive.

#### i. Evidentiary Support for the Trial Court's Findings of Fact

As an initial matter, Defendant challenges the sufficiency of the evidence to support Finding of Fact No.3, in which the trial court found that, since the suspect did not have anything covering his face, "each victim that saw him [had] the opportunity to identify his face." In support of this argument, Defendant directs our attention to conflicting testimony delivered by several of the victims at trial concerning the extent to which they were able to view the suspect's face during the robbery. The fundamental problem with Defendant's argument is that the evidence upon which he relies to support it was not presented at the suppression hearing. At the suppression hearing, Detective Mayo testified that Dequell Exum stated that the suspect did not have anything covering his face, and the record contains no evidence to the contrary. As a result, Finding of Fact No. 3 has adequate record support and is binding for purposes of appellate review. *Williams*, 366 N.C. at 114, 726 S.E.2d at 165.

Secondly, Defendant challenges the sufficiency of the evidence to support Finding of Fact No. 11, which states that the photograph of Defendant contained in the photographic lineup was a contemporary picture, and Finding of Fact No. 18, which states that the photograph of Defendant contained in the photographic lineup generally resembled Defendant's appearance

at the time that the robbery was committed. In challenging these findings of fact, Defendant notes that N.C. Gen. Stat. § 15A-284.52(b)(4) provides that, "[i]n a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect's appearance at the time of the offense," and argues that the absence of any record support for Finding of Fact Nos. 11 and 18 fatally undermines the validity of Conclusion of Law No. 4, which states that the photograph used of Defendant generally resembled Defendant's appearance at the time of the offense and was a contemporary picture. In attempting to persuade us of the validity of his challenge to Finding of Fact Nos. 11 and 18, Defendant refers to the trial testimony of Detective Ingram, who stated that a photograph of Defendant taken on the day that he was arrested showed his hair "pulled back in some fashion" and did not depict "dreadlocks hanging on the side of his face," while the photograph used in the lineup presented to Dequell Exum by Detective Ingram showed Defendant wearing dreadlocks. On the other hand, Detective Mayo testified at the suppression hearing that, given the opportunities that he had had to view Defendant at approximately the same time as the robbery, he believed that the photograph used in the lineup accurately represented how Defendant, who was described by a number of the

victims as having dreadlocks, looked during that period of time. In addition, the State introduced the photographs used in the lineup into evidence at the suppression hearing, so that the trial court had an opportunity to compare Defendant's appearance as depicted in the photograph used in the lineup with Defendant's appearance as he sat in court during the suppression hearing. Based upon this evidence, we hold that Finding of Fact Nos. 11 and 18 have sufficient evidentiary support and that these findings adequately support Conclusion of Law No. 4.

Thirdly, Defendant challenges Finding of Fact No. 16, which states that Detective Ingram and Dequell Exum were the only persons present during the time when the photographic lineup was being conducted. At the suppression hearing, Detective Mayo testified that he excused himself from the room in which Detective Ingram exhibited the photographic lineup to Dequell Exum. In addition, Detective Ingram testified that he and Dequell Exum were the only persons present in the room when the photographic lineup was being conducted. Even so, Defendant notes that the Eyewitness Identification Instructions form that Detective Ingram completed listed "Det. RM Mayo and I" as having been present. However, given that "[t]he trial court's findings of fact on a motion to suppress 'are conclusive on appeal if supported by competent evidence, even if the evidence is

conflicting,'" *Williams*, 366 N.C. at 114, 726 S.E.2d at 165 (citation omitted), and given that Detectives Ingram and Mayo testified that the only persons present during the time when the photographic lineup was being conducted were Detective Ingram and Dequell Exum, the record contains ample evidentiary support for Finding of Fact No. 16. As a result, none of Defendant's challenges to the sufficiency of the evidence to support the trial court's findings of fact have merit.

ii. Validity of the Trial Court's Conclusions of Law

Next, Defendant challenges Conclusion of Law No. 7, in which the trial court determined that Detective Ingram had administered the photographic lineup in a neutral, non-suggestive manner on the grounds that it was not supported by the relevant findings of fact. The crux of Defendant's challenge to Conclusion of Law No. 7 is that Detective Ingram had seen Defendant prior to the administration of the photographic lineup since he had informed Defendant of his *Miranda* rights<sup>3</sup> and did not, for that reason, qualify as an

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<sup>3</sup>Although Detective Ingram testified that he did not recall having read Defendant's *Miranda* rights to him, he acknowledged that it was possible that he did so.

independent administrator of the identification procedure.<sup>4</sup> We do not find this argument persuasive.

N.C. Gen. Stat. § 15A-284.52(b)(1) provides that an identification procedure "shall be conducted by an independent administrator or by an alternative method as provided by [N.C. Gen. Stat. § 15A-284.52(c)]." N.C. Gen. Stat. § 15A-284.52(c) authorizes the use of various alternative methods during the performance of identification procedures in which an independent administrator is not used, including "[a] procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed." N.C. Gen. Stat. § 15A-284.52(c). As a result of the fact that Detective Ingram did not participate in the

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<sup>4</sup>Defendant also argues that the photograph used in the photographic lineup did not appropriately resemble his appearance at the time that the offenses at issue in this case were committed and that the "filler" photographs used in the photographic lineup were not selected for their resemblance to the most recent photograph of Defendant that was available to investigating officers. We do not find either of these arguments persuasive given that, as we have already discussed, the investigating officers had ample justification, stemming from the fact that the victims of the robbery described the person that they identified as Defendant as having dreadlocks while the photograph that Defendant believes should have been used in lieu of the photograph actually used by investigating officers did not depict Defendant as an individual with dreadlocks, for utilizing the photograph of Defendant upon which they relied.

development of the photographic lineup, in which the folders containing the Defendant's photograph and the filler photographs were randomly ordered, did not know which folder contained Defendant's photograph, and did not appear to have conducted the identification procedure in an impermissibly suggestive manner, the photographic lineup in which Dequell Exum identified Defendant as a participant in the robbery was conducted using an approved alternative procedure as authorized by N.C. Gen. Stat. § 15A-284.52(c).<sup>5</sup> As a result, Defendant is not entitled to relief from the trial court's order on the basis of his challenge to Conclusion of Law No. 7.

b. Constitutional Violations

In addition, Defendant argues that the trial court's order allowing the admission of evidence concerning Dequell Exum's pre-trial identification of Defendant as one of the perpetrators of the robbery violated his federal and state due process rights. Defendant's argument is without merit.

"Identification evidence must be excluded as violating a defendant's right to due process where the facts reveal a pretrial identification procedure so impermissibly suggestive

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<sup>5</sup>In acknowledgement of the fact that he was not an independent administrator, Detective Ingram "checked the box that says: Lineup administrator knows the suspect's identity and is using an approved lineup method that does not require an independent administrator."



that there is a very substantial likelihood of irreparable misidentification." *State v. Harris*, 308 N.C. 159, 162, 301 S.E.2d 91, 94 (1983). In making this determination, a reviewing court must first determine whether the pre-trial identification procedure was impermissibly suggestive and, if so, must then examine whether the use of such an impermissibly suggestive procedure created a substantial likelihood of irreparable misidentification. *State v. Fowler*, 353 N.C. 599, 617, 548 S.E.2d 684, 697 (2001), *cert. denied*, 535 U.S. 939, 122 S. Ct. 1322, 152 L.Ed.2d 230 (2002). A determination of the likelihood of irreparable misidentification hinges on an analysis of the totality of the circumstances, *State v. Capps*, 114 N.C. App. 156, 162, 441 S.E.2d 621, 624 (1994), and requires consideration of "(1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation." *Harris*, 308 N.C. at 164, 301 S.E.2d at 95.

A careful examination of the evidence presented at the pre-trial hearing leads us to conclude that the identification procedure in question was not likely impermissibly suggestive or

sufficient to create a substantial risk of irreparable misidentification. As the record clearly reflects, Dequell Exum observed Defendant during the robbery, described him as having dreadlocks below his ears, and claimed to be able to identify him because nothing covered his face. Detective Mayo believed that the photograph of Defendant included in the photographic lineup accurately depicted Defendant's appearance at the time of the robbery. The five photographs that Detective Mayo selected for use as "fillers" had physical characteristics that were similar to those of Defendant as depicted in the photograph that was used by investigating officers. The photographs utilized in the photographic lineup were placed in individually numbered manila folders and shuffled before they were given to Detective Ingram, who neither knew which folder contained Defendant's photograph nor could tell which photograph was being presented to Dequell Exum until after the procedure had been completed. The photographic lineup in which Dequell Exum identified Defendant as a participant in the robbery was conducted only a few days after the incident in question occurred. At the time that Dequell Exum viewed the folder containing Defendant's photograph, he stated that he was "100 percent sure that's him." After viewing the lineup for a second time, Dequell Exum selected the folder containing Defendant's

photograph again, stating that the person depicted in this photograph "had the big gun" on the night of the robbery and that he was "so sure." Thus, for all of these reasons, we hold that the record evidence establishes that Dequell Exum's pre-trial identification of Defendant as one of the participants in the robbery was not obtained through the use of an impermissibly suggestive identification procedure and that the identification proceeding utilized in this instance did not give rise to a substantial likelihood of irreparable misidentification. As a result, Defendant is not entitled to relief from the trial court's judgments on the basis of his challenge to the denial of his suppression motion.

B. Motion in *Limine*

Secondly, Defendant contends that the trial court erred by denying his motion in *limine* seeking the exclusion of testimony involving in-court identifications of Defendant as one of the participants in the robbery made by several of the State's witnesses. More specifically, Defendant argues that the inability of Dequell Exum, Mondareo Exum, and Donne' Wall to provide a description that sufficiently resembled Defendant's actual appearance indicates that any evidence to the effect that these witnesses made an in-court identification of Defendant as a participant in the robbery should have been excluded as

impermissibly unreliable. We do not find Defendant's argument persuasive.

1. Standard of Review

"The decision of whether to grant . . . a motion [*in limine*] rests in the sound discretion of the trial judge." *State v. Wilkerson*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 733 S.E.2d 181, 183 (2012) (quoting *State v. Hightower*, 340 N.C. 735, 746-47, 459 S.E.2d 739, 745 (1995)). An "[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

2. Evidence Related to In-Court Identifications

At trial, Dequell Exum identified Defendant as one of the four individuals who entered his apartment and robbed the occupants. Dequell Exum was not far from the individual whom he identified as Defendant while the latter was in the apartment and had a clear view of the perpetrator's face. While in the apartment, Defendant was wearing checkered pants and a white t-shirt, had dreadlocks, and did not have anything covering his face. Dequell Exum was 100% certain that the person that he had identified in the photographic lineup was the same person that

he identified in the courtroom as one of the participants in the robbery, who was Defendant.<sup>6</sup>

Mondareo Exum testified that, while he was in the apartment's bathroom, he looked up for a "split second" and saw Defendant, whose face was not covered. Mondareo Exum did not give investigating officers a description of the individual that he later identified as Defendant. In addition, Mondareo Exum never indicated that any of the suspects had dreadlocks or described any of their clothing.

Finally, Donne' Wall identified Defendant as one of the participants in the robbery at trial because he recognized him from the night of the robbery given his dreadlocks and his height. Defendant was wearing plaid pants and Mr. Wall could tell that Defendant had dreadlocks, light skin and was taller than him. On cross-examination, Mr. Wall testified that he remembered telling investigating officers that he had not gotten a good look at the individuals who participated in the robbery. However, he specifically claimed to have remembered the

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<sup>6</sup>Defendant argues for the first time on appeal that Dequell Exum's in-court identification was tainted by the pre-trial lineup procedure. However, given that Defendant failed to raise this argument in the hearing held for the purpose of considering his suppression motion or his motion in *limine*, this argument is not properly before us and will not be addressed in this opinion. *State v. Williamson*, 333 N.C. 128, 138, 423 S.E.2d 766, 771 (1992); N.C. R. App. P. 10(a).

individual that he identified at trial as Defendant based on his pants and his dreadlocks.

### 3. Legal Analysis

"As a general rule, the credibility of witnesses and the proper weight to be given their identification testimony is a matter for jury determination." *State v. Turner*, 305 N.C. 356, 362, 289 S.E.2d 368, 372 (1982); *State v. Green*, 296 N.C. 183, 188, 250 S.E.2d 197, 200-01 (1978) (stating that "[t]he credibility of a witness's identification testimony is a matter for the jury's determination"). Any uncertainty regarding the accuracy of a witness' identification testimony goes to the weight that the trier of fact should give to that testimony rather than to its admissibility. *State v. Billups*, 301 N.C. 607, 616, 272 S.E.2d 842, 849 (1981). The rule in question is, however, inapplicable "where the testimony is inherently incredible and in conflict with the physical conditions established by the State's own evidence." *State v. Begley*, 72 N.C. App. 37, 43, 323 S.E.2d 56, 60 (1984) (citing *State v. Wilson*, 293 N.C. 47, 51, 235 S.E.2d 219, 221 (1977)). "[T]he test to be employed to determine whether the identification evidence is inherently incredible is whether 'there is a reasonable possibility of observation sufficient to permit subsequent identification.'" *Turner*, 305 N.C. at 363, 289

S.E.2d at 372 (quoting *State v. Miller*, 270 N.C. 726, 732, 154 S.E.2d 902, 906 (1967)). "Where such a possibility exists, the credibility of the witness' identification and the weight given his testimony is for the jury to decide." *Id.*

The record developed before the trial court clearly shows that each of the three witnesses whose testimony Defendant has attacked on appeal had the opportunity to observe Defendant from extremely close proximity at a time when Defendant's face was not covered. Although Defendant correctly notes that the credibility of the identification testimony given by Dequell Exum, Mondareo Exum, and Donne' Wall could legitimately be challenged based on inconsistencies in their testimony and limitations on their ability to observe the person that they identified as Defendant during the robbery, the extent to which such a challenge should be deemed persuasive is clearly a matter for the jury instead of the trial court. *Green*, 296 N.C. at 188, 250 S.E.2d at 200-01. As a result, given that our review of the identification evidence presented by Dequell Exum, Mondareo Exum, and Donne' Wall establishes that "there is a reasonable possibility of observation sufficient to permit subsequent identification," *Turner*, 305 N.C. at 363, 289 S.E.2d at 372 (quotations and citations omitted), the trial court did

not err by denying Defendant's motion in *limine* directed toward this testimony.

III. Conclusion

Thus, for the reasons set forth above, we conclude that none of Defendant's challenges to the trial court's judgments have merit. As a result, the trial court's judgments should, and hereby do, remain undisturbed.

NO ERROR.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).