

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY RYAN WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66814

FILED

AUG 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of robbery on a person over 60 years of age. First Judicial District Court, Carson City; James Todd Russell, Judge.

Show-up identification

Appellant Jeremy Ryan Wilson claims the district court erred by denying his pretrial motion to suppress evidence of the witnesses' identifications.¹ He argues the show-up identification was unnecessarily suggestive because it was not justified by exigent circumstances and the witnesses' identifications were unreliable.

When a pretrial identification precedes formal charges, the district court evaluates a due process claim that the identification was unduly suggestive by considering the totality of the circumstances surrounding the identification. *Johnson v. State*, 131 Nev. ___, ___, ___

¹Wilson's claims were preserved for appeal. See NRS 174.035(3).

P.3d ___, ___ (Ct. App. Nev. Adv. Op. No. 58, July 30, 2015, at 9). “The test is whether, considering all the circumstances, the [identification] conducted in this case was so unnecessarily suggestive and conducive to irreparable mistaken identification that appellant was denied due process of law.” *Gehrke v. State*, 96 Nev. 581, 583-84, 613 P.2d 1028, 1029 (1980) (internal quotation marks and parenthesis omitted). In applying this test, the court focuses on “two questions: (1) whether the [identification] procedure was unnecessarily suggestive, and (2) whether the identification was nonetheless reliable in spite of any unnecessary suggestiveness in the identification procedure.” *Johnson*, 131 Nev. at ___, ___ P.3d at ___ (Ct. App. Nev. Adv. Op. No. 58, July 30, 2015, at 10). On appeal, we review the court’s factual findings for clear error and the legal consequences of the factual findings de novo. *Lamb v. State*, 127 Nev. 26, 31, 251 P.3d 700, 703 (2011).

Here, the district court’s factual findings were limited.² The court determined the identification procedure was not unnecessarily suggestive, there was no evidence that witnesses Stanley Morrison and Mary Lu Miller influenced each other’s identification, and the show-up identification was compelled by exigent circumstances—“this was an active, ongoing, and quickly developing investigation, and the field

²The district court did not conduct a suppression hearing and appears to have based its factual findings on the evidence presented during the preliminary hearing.

identification was used to establish probable cause to arrest [the] defendant.”

Our review of the record reveals the procedure the sheriff's deputies used for the show-up identification consisted of transporting the three witnesses to the Plaza Hotel parking lot where the two suspects were being held. Four or five deputies and a canine were present, the deputies brought one of the suspects out of a patrol vehicle after the witnesses arrived, and the suspects may have been wearing handcuffs. Morrison and Miller made their identifications from the same patrol vehicle. Morrison heard Miller make her identification and subsequently identified the same suspect. Thomas Holmes made his identification from a different vehicle. Only Morrison was 100% certain of his identification and none of the witnesses were able to identify the second suspect. The record suggests the show-up identification was conducted almost immediately after the crime was committed.

We conclude this show-up identification was unnecessarily suggestive because two of the witnesses made their identifications from the same patrol vehicle “where their initial reaction, whether correct or not, could be reinforced.”³ *Gehrke*, 96 Nev. at 586, 613 P.2d at 1031 (Mowbray, C.J., concurring).

³To the extent Wilson argues the show-up identification was unnecessarily suggestive because the deputies did not follow their internal operating procedures, we reject his argument. In evaluating a due process claim that the identification procedure was unduly suggestive, we are only concerned with the procedure that was actually used. Nonetheless, it is
continued on next page...

Even when an identification procedure was suggestive, we will uphold the identifications if they are reliable. *Johnson*, 131 Nev. at ___, ___ P.3d at ___ (Ct. App. Nev. Adv. Op. No. 58, July 30, 2015, at 14). Reliability is evaluated by weighing the suggestiveness of the identification procedure against “the opportunity of the witness to view the criminal at the time of the crime, the witness’ degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation.” *Canada v. State*, 104 Nev. 288, 294, 756 P.2d 552, 555 (1988) (quoting *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977)).

Here, Miller testified she saw the suspect run towards her, she watched him for about 10 or 20 seconds, and she was only able to get a fleeting look at his face. Morrison testified he saw the suspect three times: when the suspect walked past his truck, when the suspect robbed the victim, and when the suspect fled to the Carson Nugget Casino. Holmes testified he observed the suspect walking on Carson Street, he was about 50 to 60 feet away, and he was wearing a blue baseball cap. Holmes heard the victim scream and saw the suspect run towards the casino. All three witnesses testified the suspect was wearing jeans, a white t-shirt, and a blue cap. And all three witnesses identified Wilson at the show-up identification: Morrison was 100% certain of his identification, Miller was

...continued

axiomatic that adherence to carefully-drafted internal operating procedures may reduce or eliminate the suggestiveness of a show-up procedure.

less certain—she said it looked like him but she could not “swear on a stack of Bibles,” and Holmes was 75% certain of his identification. The witnesses expressed the same level of certainty when they were asked to make in-court identifications.

We conclude the witnesses’ identifications were sufficiently reliable and did not deprive Wilson of due process of law. Moreover, we note the identifications adequately established the probable cause necessary to support Wilson’s arrest. *See State v. McKellips*, 118 Nev. 465, 472, 49 P.3d 655, 660 (2002) (defining probable cause).

Voluntariness of confession


Wilson claims the district court erred by denying his pretrial motion to suppress his confession because it was not made voluntarily. He argues he was still visibly shaken by the arresting officer’s abusive behavior at the time of the interview and his mental state and ingestion of drugs and alcohol impaired his ability to resist the detectives’ overbearing police tactics.


“A confession is admissible only if it is made freely and voluntarily, without compulsion or inducement.” *Passama v. State*, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987). “The question of the admissibility of a confession is primarily a factual question addressed to the district court: where that determination is supported by substantial evidence, it should not be disturbed on appeal.” *Chambers v. State*, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

The district court found there was no evidence the detectives engaged in coercive conduct or exploited any mental defect, alcohol and

drug ingestion did not render Wilson unconscious of what he was saying or unable to understand the meaning of statements, and Wilson engaged in conversation with the detectives and was able to understand and answer their questions. The record demonstrates the district court's findings are supported by substantial evidence, and it also reveals that Wilson was advised of his *Miranda* rights, he agreed to speak with the detectives, and his interview was short. *See Passama*, 103 Nev. at 214, 735 P.2d at 323 (identifying factors for evaluating the voluntariness of a confession). We conclude the district court did not err by denying Wilson's suppression motion.

Having concluded Wilson is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Todd Russell, District Judge
Michael C. Novi
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk