

Nontestimonial Identification Order

(3) Judge Lacked Authority to Issue Defense-Requested Nontestimonial Identification Order to Require State to Obtain DNA Sample from State's Witness for Testing

State v. Ryals, 179 N.C. App. 733, 635 S.E.2d 470 (17 October 2006).
The defendant was convicted of second-degree murder. State's witness Lee testified that she saw the defendant beat the victim with his fists and kick and stomp him. State's witness Winstead also testified about the defendant's beating of the victim. A police department crime technician recovered a black knit cap and other items from the crime scene. Negroid hair was found on the cap, but a state's witness testified it was not suitable for further analysis. A defense expert witness compared a DNA sample from the hair on the cap with the defendant's DNA sample and concluded that it could not have originated from the defendant. Before trial, a judge denied the defendant's motion for a nontestimonial identification order to collect a DNA sample from Winstead to compare it with DNA from the hair on the cap; the defendant contended that Winstead had a motive to commit the murder, was present at the scene, and could have committed the murder. (3) The court ruled, relying on *State v. Tucker, 329 N.C. 709, 407 S.E.2d 805 (1991)*, that the trial judge lacked the authority to issue a defense-requested nontestimonial identification order to require the state to obtain a DNA sample from state's witness Winstead to conduct comparison testing with DNA from the hair on the cap.

1. Search And Seizure–Nontestimonial Identification Order–Affidavit–Reasonable Grounds For Suspicion

State v. Pearson 356 NC 22 (2002)

A rape defendant's motion to suppress evidence gained from a nontestimonial identification order was properly denied where the affidavit sufficiently established reasonable grounds to suspect that defendant had committed the rapes. Defendant was a suspect based on more than a minimal amount of objective justification and more than a particularized hunch.

2. Search And Seizure–Nontestimonial Identification Order–Supporting Affidavit–Reliance On Information From Another Officer

State v. Pearson 356 NC 22 (2002)

A rape defendant failed to produce evidence that a statement in an affidavit supporting a no testimonial identification order was made in bad faith such that it was knowingly false or in reckless disregard of the truth where the affidavit alleged that defendant had been seen peeping into an apartment but defendant argued that the report did not show that defendant was actually seen peeping. A police officer making an affidavit for issuance of a warrant may do so in reliance upon information reported to him by other officers in the performance of their duties, and the officer making the affidavit from a report in this case had every reason to conclude that defendant had been secretly peeping.

3. Search And Seizure–Nontestimonial Identification Order–Procedures Following Collection Of Samples

State v. Pearson 356 NC 22 (2002)

The trial court properly concluded that violations of statutory nontestimonial identification statutes were not substantial and correctly refused to suppress the seized evidence where a return was not made to the issuing judge within 90 days and defendant was not provided with a copy of the results in a timely manner. N.C.G.S. § 15A-974(2) mandates suppression when the evidence is obtained as a result of the violation, but these violations involved procedures to be followed after the samples are taken and the deviation was a mere unintentional oversight. The defense interests protected by the statutes are the requirement of an inventory of what was seized and the opportunity to move for the destruction of that evidence, but the defendant in this case was alert during the procedure, knew what was taken, and did not move for destruction of the evidence. Finally, a subsequent search warrant obtained as the result of an SBI agent's tenacity over ten years provided more conclusive DNA and factual evidence, and it is unlikely that defendant would have avoided prosecution if this evidence was destroyed. N.C.G.S. §§ 15A-280, -282. See Farb p5, #3

1.Evidence--Nontestimonial Identification Order--Hair And Saliva Samples--Motion To Suppress--Statutory Violations

State v. Pearson 145 NCA 506 (2001)

The trial court did not err in a case where defendant pled guilty to two counts of second-degree rape by denying defendant's motion to suppress evidence of hair and saliva samples obtained from a nontestimonial identification order (NIO) even though defendant contends there were statutory violations after the NIO was obtained, because: (1) the State met the requirements of N.C.G.S. § 15A-271 establishing reasonable grounds to believe defendant committed the offenses before obtaining the

NIO based on an officer's affidavit; (2) although defendant contends his right to counsel was violated, N.C.G.S. § 15A-279(d) protects subjects complying with an NIO from statements made during the procedure but does not render the results of the tests themselves inadmissible, and defendant is not seeking to suppress a statement made during the procedure; and (3) the failure to return an inventory from the NIO procedure to the judge within ninety days as required by N.C.G.S. § 15A-280 was not a substantial violation when defendant did not request an inventory or file a motion to have the products and reports of the NIO destroyed, and defendant was present during the procedure and saw what was taken from him.

2.Evidence--Nontestimonial Identification Order--Hair And Saliva Samples--Motion To Suppress--Probable Cause

State v. Pearson 145 NCA 506 (2001)

The trial court did not err in a case where defendant pled guilty to two counts of second-degree rape by denying defendant's motion to suppress evidence of hair and saliva samples obtained from a nontestimonial identification order (NIO) even though defendant contends the NIO was allegedly not appropriately obtained and there was allegedly no probable cause, because: (1) although the State failed to comply with all of the safeguards provided under Article 14 of Chapter 15A of the North Carolina General Statutes, defendant still has not shown a substantial statutory violation rendering the NIO evidence inadmissible; and (2) the taking of hair and saliva samples without a showing of probable cause did not abridge either the North Carolina or United States Constitutions when the samples are commonly seen and can be removed by the suspect rather than a technician, and the reasonableness safeguards of sample-taking were adhered to in this case.