

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26357
	:	
v.	:	Trial Court Case No. 2013-CR-3940/2
	:	
CHRISTINA K. WILLIAMS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 10th day of April, 2015.

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HALL, J.

{¶ 1} Christina K. Williams appeals from her conviction and sentence following her

no contest plea to one count of complicity to commit burglary, a second-degree felony.

{¶ 2} In her sole assignment of error, Williams claims that the trial court erred in denying her motion to suppress, as the identification of her photograph from a six-person photo lineup “arose from a photographic lineup that was unduly suggestive and violated [her] constitutional right to due process.”

{¶ 3} According to the evidence presented at the suppression hearing, which the trial court found to be credible, Det. Jason Threlkeld was assigned to investigate a burglary that occurred on July 7, 2013, at 317 East Maple Avenue, a two-story single-family home, in Miamisburg. Two of the residents, Terry Vanderburg and one of her daughters, Kacie Seabolt, were present at the time of the burglary.

{¶ 4} The investigation revealed that a man and a woman approached the residence, and the man entered the home without permission and attempted to steal property. A struggle ensued between the man and Vanderburg, and the altercation “spilled out” into the backyard. After the man’s female companion became involved in the struggle, the man and woman fled on foot. The police were contacted, and Vanderburg and Seabolt provided descriptions of the man and woman to the police. Threlkeld did not detail at the suppression hearing how the suspects were described.¹

{¶ 5} Five months later, in mid-December 2013, Det. Threlkeld learned of Williams’s potential involvement in the burglary. After speaking with Williams, Det. Threlkeld prepared a six-person photo lineup using the Ohio Law Enforcement Gateway (OHLEG) website, which has photographs of all individuals in Ohio who have either a

¹ The State’s memorandum in opposition to the motion to suppress stated that the female suspect was described as a “short, slightly overweight Caucasian with dark hair that was put up, and was approximately 18-20 years of age.”

driver's license or other state identification. Threlkeld found Williams's record through her Social Security number and then used the lineup feature of the program to randomly find other women of similar height, weight, eye color, race, and "other things of that nature." Threlkeld selected five of those photographs, in addition to Williams's photo, for a six-person photo grid.

{¶ 6} All of the photographs were in color and had the same size, shape and consistency. Reviewing the lineup, which was admitted as Exhibit 1, Det. Threlkeld stated that all of the photographs were of women with brown or dark brown hair, similar eye color, and all approximately the same age. The heights and weights of all the women were similar to Williams. On cross-examination, defense counsel questioned Threlkeld about differences in the photographs regarding clothing, jewelry, facial expression, and eyebrow piercing.

{¶ 7} Detective Threlkeld further testified that the Miamisburg Police Department has a written policy regarding photo lineups. That policy, which was dated July 6, 2010, was admitted as Exhibit 2. Threlkeld testified that he complied with the policy when he created the photo lineup for this case.

{¶ 8} After the photo lineup was prepared, Det. Threlkeld put the "key page" with information regarding the individuals in the photographs in his case file, and he provided the photo lineup, with written instructions, to Officer Russell Green. Threlkeld stated that he did not tell Officer Green any information about the case, the suspect, or the suspect's location in the lineup.

{¶ 9} On January 6, 2014, Officer Green showed the photo lineup to Seabolt. Green testified that he introduced himself to Seabolt and read her verbatim the

instructions that were included with the lineup. Those instructions included statements that the photo array might not include the perpetrator, that hair styles and facial hair may easily be changed, and that the photographs may not always depict the true complexion of the person. Seabolt identified Photo #3, which was Williams's photo. Green wrote that Seabolt had indicated that she was 50% certain of her identification and that she had stated, "I didn't see her as long as I did the other person." Seabolt wrote regarding her certainty in the identification that individual #3's "nose, mouth and eyebrow piercing look the same."

{¶ 10} Officer Green testified that he did not know anything about the underlying facts of the case before or after presenting the lineup, and that neither he nor Det. Threlkeld gave any indication to Seabolt as to which person she should select. He further testified that he followed the police department's policy on photo lineups when he presented the lineup in this case.

{¶ 11} On January 16, 2014, Williams was indicted for complicity to commit burglary. She subsequently filed a motion to suppress any pretrial identification, arguing that the photo array was unduly suggestive. After a hearing on the motion, the trial court orally found that the photo array was not unduly suggestive. The court entertained post-hearing briefing regarding the officers' compliance with R.C. 2933.83, which establishes minimum requirements for photo lineup procedures. In a subsequent written decision, the trial court found that the identification was admissible, but because the police used a six-pack system rather than a folder system, the trial court would provide the jury with an instruction indicating that law enforcement authorities did not comply with the folder system requirements in R.C. 2933.83.

{¶ 12} On appeal, Williams claims that the photo array was unduly suggestive and thus the trial court erred in overruling her motion to suppress. She states that she was the only individual in the photo array with an eyebrow piercing, causing her photograph to “stand out.” Williams emphasizes that Seabolt relied, in part, on the eyebrow piercing in making her identification. Williams does not argue that the manner in which the photos were presented to Seabolt was unduly suggestive and required the identification to be suppressed.

{¶ 13} “When a witness has been confronted with a suspect before trial, due process requires a court to suppress the witness’s identification of the suspect if the confrontation was unnecessarily suggestive of the suspect’s guilt and the identification was unreliable under the totality of the circumstances.” *State v. Harris*, 2d Dist. Montgomery No. 19796, 2004-Ohio-3570, ¶ 19. “The defendant must first show that the identification procedure was unduly suggestive. If the defendant meets that burden, the court must then consider whether the identification, viewed under the totality of the circumstances, is reliable despite the suggestive procedure. If the pretrial confrontation procedure was not unfairly suggestive, any remaining questions as to reliability go to the weight of the identification, not its admissibility, and no further inquiry into the reliability of the identification is required.” (Citations omitted.) *Id.*

{¶ 14} The defendant “bears the burden of showing that the identification procedure was ‘so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification’ and that the identification itself was unreliable under the totality of the circumstances.” *State v. Sherls*, 2d Dist. Montgomery No. 18599, 2002 WL

254144, *2 (Feb. 22, 2002), quoting *Neil v. Biggers*, 409 U.S. 188, 199, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972).

{¶ 15} The photo array is before us and we have examined it. As indicated by Det. Threlkeld, the photo array contains six color photographs of young women of approximately the same age, hair color, and eye color. All of the photographs have a blue background, and all of the individuals are in different casual attire. There are variations in the jewelry worn and each woman's complexion and facial expression. Williams's photo shows an eyebrow piercing by her right eyebrow.

{¶ 16} Upon review of the record, we cannot conclude that the photo lineup is unduly suggestive of Williams's guilt. See *State v. Carter*, 2d Dist. Montgomery No. 2006-Ohio-2823 (differences in skin tones and backgrounds did not render photograph unduly suggestive). At the outset, we have previously held that "a computerized method of creating photo spreads avoids most potential unfairness and almost any claim that the lineup was suggestive." *Id.* at ¶ 34, citing *State v. Beckham*, 2d Dist. Montgomery No. 19544, 2003-Ohio-3837 and *State v. Beddow*, 2d Dist. Montgomery Nos. 16197 & 16198, 1998 WL 126876 (Mar. 20, 1998); *State v. Mitchell*, 2d Dist. Montgomery No. 25349, 2013-Ohio-3761, ¶ 15. Moreover, "[a] defendant in a lineup need not be surrounded by people nearly identical in appearance." *State v. Davis*, 76 Ohio St.3d 107, 112, 666 N.E.2d 1099 (1996).

{¶ 17} Here, Williams was the only individual with an eyebrow piercing, but we do not conclude from our review of the photographs that her image was unduly suggestive. The six photographs were substantially alike, and Williams's eyebrow piercing was not a significant facial feature. Seabolt was provided explicit instructions by Officer Green that

the perpetrator's image may not be among the photographs and that hair styles, beards, and moustaches may easily be changed, which indicated that Seabolt should give little weight to changeable features, including piercings. Williams argues that Seabolt identified the eyebrow piercing as a basis for her identification, but the small eyebrow piercing did not draw undue attention to her photograph. Upon review of the photo array, we agree with the trial court that the array was not unduly suggestive.

{¶ 18} We conclude that the trial court did not err in denying Williams's motion to suppress the photo lineup identification. Williams's assignment of error is overruled, and the trial court's judgment is affirmed.

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DONOVAN, J., and WELBAUM, J., concur.

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