

IN THE COURT OF APPEALS 08/06/96
OF THE
STATE OF MISSISSIPPI
NO. 93-KA-00993 COA

WILLIE CHARLES TOWNSEND

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. MARCUS D. GORDON

COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ROY NOBLE LEE, JR.

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JEAN SMITH VAUGHAN

DISTRICT ATTORNEY: KEN TURNER

NATURE OF THE CASE: ARMED ROBBERY

TRIAL COURT DISPOSITION: GUILTY OF ARMED ROBBERY AND SENTENCED TO
SERVE 33 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF
CORRECTIONS

BEFORE FRAISER, C.J., DIAZ, AND McMILLIN, JJ.

DIAZ, J., FOR THE COURT:

Willie Charles Townsend (Townsend) was indicted, tried, and convicted of armed robbery by the Circuit Court of Scott County and sentenced to serve thirty-three years in the custody of the Mississippi Department of Corrections as a habitual offender. On appeal, Townsend claims that the lower court erred in admitting his identification by the witnesses because they were influenced by improperly suggestive lineups. Finding no error, we affirm.

FACTS

Lenora Purvis (Purvis) and Lisa Myers (Myers) were employees of Fisherman's Corner, a convenience store in Morton, Mississippi. On February 24, 1993, at approximately 2:00 P.M. a man entered the store to purchase a lantern wick. He asked Myers where the wicks were located, and she directed him to the hardware department. He returned a few minutes later and said he could not find the wicks. Myers asked Purvis where the wicks were located, and Purvis told her they were behind the counter. Purvis removed a box of wicks for him to look at, but he stated they were not what he wanted. Purvis turned to put the box back on the shelf. When Purvis turned back to face the man he told her that he was there to rob the store and to open the registers. Purvis refused. The man pulled a knife from his coat pocket and jumped over the counter, positioning himself between Myers and Purvis. He again demanded that they open the registers. Myers opened her register, and the man began taking the money. While he was emptying Myers' register, Purvis began to move toward the counter where a gun was kept. The man saw Purvis and told her he would kill her if she moved again. He finished getting the money from Myers and demanded that Purvis open her register. She complied, and he emptied her register. The man jumped over the counter and ran out of the store.

After the robbery, Purvis and Myers met with Officer Jeff Robertson (Robertson) of the Morton Police Department. Purvis and Myers were separately shown a photo lineup which contained a photograph of Townsend. Both women identified Townsend as the man who robbed them and later identified him in court as the perpetrator.

DISCUSSION

Townsend contends that the photo line-ups at which Purvis and Myers first identified him were unduly suggestive and that the trial court therefore erred in allowing Purvis and Myers to identify Townsend in court. According to Townsend, the photo lineups were suggestive because he was the only individual not wearing a shirt and with a full beard. Townsend argues that this suggestive pre-trial identification procedure tainted the subsequent in-court identifications. The State contends that the witnesses' in-court identifications were reliable and not influenced by impermissibly suggestive photographic lineups. An examination of the record reveals that the photographs used in the lineups were not incorporated into the record by either party.

Assuming without deciding that the pre-trial identification procedures were in fact suggestive, the subsequent in-court identifications of Townsend may still be deemed reliable if they meet the standard

of reliability set forth in *Neil v. Biggers*, 409 U.S. 188 (1972). See also *Magee v. State*, 542 So. 2d 228, 232 (Miss. 1989). By considering the following five *Biggers* factors in view of the "totality of the circumstances," the reliability of an in-court identification is to be evaluated. These factors are:

- (1) The opportunity of the witness to view the criminal at the time of the crime.
- (2) The witness' degree of attention.
- (3) The accuracy of the witness' prior description of the criminal.
- (4) The level of certainty demonstrated by the witness at the confrontation.
- (5) The length of time between the crime and the confrontation.

Magee, 542 So. 2d at 232.

(1) *Opportunity to View*. Purvis and Myers testified that the robber was in the store seven or eight minutes and that the area was well lit. They also testified that there was nothing covering his face or obstructing their view of him while he was in the store. Purvis and Myers both testified that he was within one foot of them during the robbery.

(2) *Degree of Attention*. Purvis testified that while Townsend was in the store she helped him exclusively for several minutes and that she had ample time to observe and identify him. Myers testified that she was waiting on two other customers when Townsend came into the store. However, after the other customers had left the store, and she had devoted a few minutes exclusively to him in an effort to locate the merchandise he requested.

(3) *Accuracy of Prior Description*. Purvis and Myers both testified that the robber was a black man who had a beard and wore blue jeans, a blue jean jacket, and a blue toboggan.

(4) *The Level of Certainty at the Initial Confrontation*. Townsend does not dispute that Purvis and Myers exhibited a high degree of certainty when they identified him following the photographic lineups. He does argue that the emotional state of the women caused their judgment to be impaired.

(5) *Time Between the Crime and the Confrontation*. Purvis and Myers confronted and identified Townsend a few hours after the robbery.

Under the totality of the circumstances, and in view of the fact that Purvis' identification corroborated that of Myers, we cannot say that the in-court identifications of Townsend were not reliable. We therefore hold that Townsend's contentions regarding the reliability of Purvis' and Myer's in-court identifications of him are without merit.

THE JUDGMENT OF THE SCOTT COUNTY CIRCUIT COURT OF CONVICTION OF ARMED ROBBERY AND SENTENCED AS A HABITUAL OFFENDER TO SERVE 33 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO SCOTT COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.

