

**IN THE COURT OF APPEALS 07/02/96**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 93-KA-01093 COA**

**FRANK STUTTS HARRIS**

**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. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CHARLES E. WEBSTER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARIS, JR.

DISTRICT ATTORNEY: LAURENCE Y. MELLON

NATURE OF THE CASE: ROBBERY

TRIAL COURT DISPOSITION: GUILTY OF ROBBERY, SENTENCED TO SERVE FIFTEEN  
YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND  
PAY RESTITUTION IN THE AMOUNT OF \$168.00

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

DIAZ, J., FOR THE COURT:

The Circuit Court of Coahoma County tried and convicted Frank Stutts Harris (Harris) for the January 24, 1993, robbery of the Texaco Gasmart located in Cleveland, Mississippi. On appeal, Harris claims that the lower court erred in allowing a police officer to testify to what he observed on the surveillance video taken in the store. Finding no error, we affirm.

### FACTS

Reola Johnson (Johnson) was working the 11:00 A.M. to 7:00 P.M. shift as a clerk at the Texaco Gasmart on January 24, 1993. In the early morning hours, Johnson was stocking merchandise when a man came into the store to purchase gas. Johnson returned to the cash register to receive the man's payment for the gas. As Johnson received the man's money, she opened the cash register to give him change. At that time the man reached into the cash register and grabbed a handful of bills. The man told Johnson that the store was being robbed and instructed her to move away from the counter. She complied; the man took the money and left the store. Johnson pulled the alarm, and the police arrived five to ten minutes later.

The store was equipped with video surveillance cameras, and the police officers requested to view the tape containing the robbery. Officer Joe Conner (Conner), a patrolman with the Clarksdale Police Department, was one of the officers who answered the alarm from the Gasmart. Conner viewed the tape and immediately identified the robber as Frank Harris, an individual Conner had known since childhood.

### DISCUSSION

Harris contends the lower court erred in allowing Conner to testify about what he observed on the surveillance video because he was not present at the robbery. The State argues that the testimony was properly admitted and does not violate Mississippi Rule of Evidence 701.

As a lay witness, Conner's testimony is limited by Rule 701 to opinions or inferences which are rationally based on his perception and are helpful to the clear understanding of his testimony or the determination of a fact in issue. M.R.E. 701. In order for Conner's opinion to be admissible, he must have personal knowledge of the identity of the perpetrator and, if Conner's opinion is accepted as true, must be helpful to the jury in resolving the issues presented. *Conner v. State*, 632 So. 2d 1239, 1266-67 (Miss. 1993).

Harris contends that Conner's testimony did not meet the requirement of personal knowledge or observation. The State argues that Conner personally viewed the surveillance video and positively identified Harris as the man on the tape. Moreover, the State argues, Conner did not testify that

Harris committed the crime, but only that he looked at the video and generally identified Harris.

The record reveals that Conner personally observed the surveillance video and positively identified Harris as the individual pictured on the video. Additionally, the tape was admitted into evidence and viewed by the jury. Conner's testimony to the trial court was as follows:

Mr. Weinberger: Well, how many times did you watch and listen to the video tape?

Mr. Conner: I watched it about approximately three times on that morning, and I watched it twice at the police station afterwards.

Mr. Weinberger: As a result of your watching it, was the name of a suspect arrived at?

Mr. Conner: Yeah. When she pointed out, That's going to be the gentleman that robbed me, and I identified him on the spot.

Mr. Weinberger: How were you able to identify this person?

Mr. Conner: Happened to be somebody I knew.

Mr. Weinberger: And how long had you known this person?

Mr. Conner: Since childhood.

Mr. Weinberger: And who was the person you identified in that way?

Mr. Conner: Mr. Frank Harris.

From the record it appears that Conner had personal knowledge of the identity of Harris and permissibly testified thereto. His testimony also provided the jury with helpful information in resolving the identity of the individual on the surveillance video, a major issue in the case.

This case is distinguishable from *Wells v. State* where the Mississippi Supreme Court found that an officer's testimony after viewing a surveillance video was inadmissible. *Wells v. State*, 604 So. 2d 271, 279 (Miss. 1992). In that case, the officer viewed the video and offered his opinion as to how the clerk's actions deviated from standard procedure. *Id.* He also described events on the videotape which could clearly be seen by the jury without his comments. *Id.*

In the case at bar, Conner did not testify to any actions which appeared on the videotape, but only provided a positive identification of the individual. This was helpful to the jury due to the fact that the individual pictured on the tape was not easily identifiable. As such, the testimony was properly admitted pursuant to Rule 701, and Harris' assignment of error is without merit.

**THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF ROBBERY AND SENTENCE TO SERVE FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED AND PAY RESTITUTION IN THE AMOUNT OF \$168.00 IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE**

**TAXED TO COAHOMA COUNTY.**

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