

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00877-COA**

KEVIN DALE LOVE

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

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| DATE OF JUDGMENT: | 07/30/96 |
| TRIAL JUDGE: | HON. GEORGE B. READY |
| COURT FROM WHICH APPEALED: | DESOTO COUNTY CIRCUIT COURT |
| ATTORNEY FOR APPELLANT: | DAVID CLAY VANDERBURG |
| ATTORNEY FOR APPELLEE: | OFFICE OF THE ATTORNEY GENERAL BY: JOLENE M. LOWRY |
| DISTRICT ATTORNEY: | ROBERT L. WILLIAMS |
| NATURE OF THE CASE: | CRIMINAL - FELONY |
| TRIAL COURT DISPOSITION: | ARMED ROBBERY: 20 YRS, LAST 14 YRS SUSPENDED UPON GOOD BEHAVIOR, SERVE 6 YRS; SENTENCE NOT TO BE REDUCED, SUSPENDED, NOT ELIGIBLE FOR PAROLE, PROBATION OR ANY REDUCTION OF TIME; PAY \$361.10 TO NPC INTL; |
| DISPOSITION: | AFFIRMED - 11/18/97 |
| MOTION FOR REHEARING FILED: | |
| CERTIORARI FILED: | |
| MANDATE ISSUED: | 12/9/97 |

BEFORE THOMAS, P.J., HINKEBEIN, AND KING, JJ.

KING, J., FOR THE COURT:

Kevin Dale Love was convicted of armed robbery in the Circuit Court of DeSoto County of the Pizza Hut in Southaven. He was sentenced to twenty years, with fourteen years suspended, in the custody

of the Mississippi Department of Corrections. Love was also ordered to make restitution in the amount of \$361.10 to NPC International, d/b/a Pizza Hut of Southaven.

According to the facts, on December 17, 1994, Love, a former employee of the Southaven Pizza Hut, entered the restaurant through an open rear door and asked employee Marquis Johnson where the manager was. Johnson told him that he did not know. Johnson recognized Love as having worked there before and was not alarmed by his entrance. However, Love pointed a handgun in Johnson's face and told him to get on the floor. Johnson realized Love was serious and fell to the floor. Love pulled a scarf over the lower part of his face and went to Robert Maxwell, a second employee, and ordered him to the floor. Again, Love asked, "Where's the manager?" Love found Charles Avant, the manager, sitting at his desk and ordered him to get the money from the safe. Avant did as he was told. Love then ordered the three men to get into the walk-in cooler. They went in and waited for a few minutes, then came out and called the police.

When the police arrived Johnson identified the robber as Kevin Love and gave a full description of Love. Maxwell and Avant could not identify the perpetrator but described the clothing he wore. Subsequently, the police arrested Love for the robbery.

During the trial, Love moved to suppress Johnson's in-court identification as having been tainted by an impermissibly suggestive photo spread. The court denied the motion. Love also raised a hearsay objection to a portion of Officer Dianne Teske's testimony that described the robbery's investigative process. The court overruled his objection. The jury convicted Love of armed robbery.

Love appeals his conviction alleging (1) the court erred in overruling and denying his motion to suppress the in-court identification and the photo line-up and (2) the court erred in overruling his objection to the testimony of Officer Dianne Teske, which involved hearsay testimony. Finding no merit in Love's appeal, we affirm his conviction and sentence.

A.

WHETHER THE TRIAL COURT ERRED IN OVERRULING AND DENYING LOVE'S MOTION TO SUPPRESS THE IN-COURT IDENTIFICATION AND THE PHOTO LINE-UP.

Love contends that the trial court erred by denying his motion to suppress Marquis Johnson's in-court and photo line-up identification because they were impermissibly suggestive and it gave rise to a very substantial likelihood of misidentification. The State argues that while Love raises the issue alleging that the photo line-up and in-court identifications were impermissibly suggestive, he fails to indicate how or why. In the alternative, the State argues that Johnson's identification of Love was not based on the photo line-up but was based on Johnson's independent personal knowledge of Love as one-time co-workers at the same Pizza Hut that Love robbed.

We find merit in both of the State's arguments. Love makes a general argument that the identifications were impermissibly suggestive; however, he fails to provide support of specific facts or legal error that would make the identifications impermissibly suggestive. Finally, based upon the record, Johnson's recognition and identification of Love was based on his prior knowledge of Love as a fellow employee of Pizza Hut. Therefore, the trial court had a sufficient basis for denying Love's motion to suppress the

identifications without making an inquiry into the factors established in *Neil v. Biggers*, 409 U.S. 188, 199 (1972). *Saucier v. State*, 562 So. 2d 1238, 1246 (Miss. 1990).

B.

WHETHER THE TRIAL COURT ERRED IN OVERRULING LOVE'S OBJECTION TO THE TESTIMONY OF OFFICER DIANNE TESKE, WHICH INVOLVED HEARSAY.

Love contends that the trial court erred by overruling his objection to Officer Teske's testimony of the description of the robber given by the victims. The State contends that this testimony was not hearsay because it was not offered to prove the truth of the statement, only the investigative steps taken by Teske.

We agree that because it was not offered to prove the identification of the robber but as an indication of the investigative process that led to Love's arrest, it was not hearsay. Mississippi Rule of Evidence 801(c). Therefore, we affirm the trial court's judgment.

THE JUDGMENT OF THE CIRCUIT COURT OF DESOTO COUNTY OF CONVICTION OF ARMED ROBBERY AND SENTENCE OF TWENTY YEARS WITH FOURTEEN YEARS SUSPENDED WITHOUT THE POSSIBILITY OF PAROLE, PROBATION OR REDUCTION OF SENTENCE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. LOVE IS ORDERED TO MAKE RESTITUTION IN THE AMOUNT OF \$361.10 TO NPC INTERNATIONAL D/B/A PIZZA HUT OF SOUTHAVEN . ALL COSTS OF THIS APPEAL ARE TAXED TO DESOTO COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.