

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of General Session

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case Number 2013-002423

The State,..... Appellee,
v.
Ivan Williams,.....Appellant.

APPELLANT'S INITIAL BRIEF

James A. Brown, Jr.
Attorney for Appellant

Law Offices of Jim Brown, PA
1600 Burnside St., Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

RECEIVED

DEC 03 2014

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Issue on Appeal 1

Statement of the Case 2

Statement of the Facts 3

Summary of the Argument 5

The Appellant argues that the court erred by allowing the admission of eyewitness testimony identifying the Appellant as the perpetrator; however, a review of the record indicates that the court’s ruling was correct.

Standard of Review 5

Argument 5

Conclusion 8

TABLE OF AUTHORITIES

Cases

<u>Anders v. California</u> , 386 US 738 (1967)	2, 8
<u>Neil v Biggers</u> , 409 US 188 (1972)	5, 6
<u>Perry v New Hampshire</u> , 565 US —, 132 S Ct 716 (2012)	6
<u>State v Liverman</u> , 727 SE2d 422 (SC 2012)	5
<u>State v Ramsey</u> , 550 SE2d 294 (SC 2001)	5
<u>State v. Starks</u> , — SE2d —, 2014 WL 5462548 (SC Ct App. 2014)	6, 7
<u>State v Traylor</u> , 600 SE2d 523 (SC 2004)	6

Statutes

None cited

STATEMENT OF THE ISSUE ON APPEAL

DID THE TRIAL COURT ERR BY ALLOWING THE ADMISSION
OF EYEWITNESS IDENTIFICATION EVIDENCE?

STATEMENT OF THE CASE

On January 26, 2012, the Appellant was arrested and charged with Burglary in the 1st degree. Arrest Warrant. This charge alleged that he entered a residence on June 27, 2011 during the nighttime hours and attempted to steal personal property. His case was tried during the November 4, 2013 term of General Sessions Court in Hampton County with the Honorable Michael G. Nettles presiding.

At the conclusion of the trial, the jury returned a guilty verdict, as charged. Verdict Form. The Court sentenced the Appellant to a 15 year term of incarceration. Sentencing Sheet. A Notice of Appeal was filed on November 8, 2013 date and this brief follows¹.

Having reviewed the record of this case, researched the issue raised by Ivan Williams and found it to have no merit, this brief is submitted pursuant to Anders v. California, 386 US 738 (1967).

¹Undersigned counsel was hired for the appeal.

STATEMENT OF THE FACTS

According to the testimony presented by the State, Ms. Singleton returned home on June 27, 2011 from a social outing. Trial Transcript, p. 55, l. 16- p. 56, l. 2. When she arrived at her house, she sat in the driveway listening to a song on the car radio. She then entered her home through the front door.

Once inside, she noticed the back door ajar. Trial Transcript, p. 56, l. 2- p. 6. She then heard noise coming from her bedroom. When she investigated, she encountered two persons standing in the bedroom and numerous personal items such as her television assembled on her bed.

She told them they needed to leave. Trial Transcript, p. 56, l. 7-22. The two suspects quickly exited the home. She then phoned the police.

During the investigation, she informed law enforcement that she recognized one of the suspects but that she did not know his full name. Trial Transcript, p. 70, l. 6-9. She indicated she only knew this suspect as "Buck." Trial Transcript, p. 67-, l. 2-11 & p. 69, l. 4-21. A detective then arranged the presentment of a photo array in an attempt to identify "Buck."

During this identification process, the detective requested that Ms. Singleton pick out "Ivan Buck Williams." Trial Transcript, p. 64, l. 1- 24. Ms. Singleton was shown a six photo array. She picked out the Appellant from that array as one of the perpetrators of the burglary.

Appellant's public defender challenged this identification during a pre-trial hearing. Trial Transcript, p. 29-37. However, the trial court ruled that the identification

was proper. His ruling indicated that any suggestion made by the detective's provision of the Appellant's full name went to the weight of the identification and not its admissibility.

During trial, Ms. Singleton again identified the Appellant. Trial Transcript p. 65, l. 15-25. She confirmed he was the person she picked in the lineup as well as the person she encountered during the burglary. This identification was the primary evidence implicating the Appellant as no fingerprints or DNA was found and no admissions by the Appellant were made.

In his defense, Appellant's counsel argued mistaken identity as a defense. Trial Transcript p. 53, l. 2-4. Counsel examined both Ms. Singleton and the detectives regarding the source of the identification of the Appellant's name. These witnesses confirmed that Appellant's full name was not known by Ms. Singleton until later. Trial Transcript, p. 67, l. 6-13.

Despite this examination, Ms. Singleton steadfastly indicated that she knew the Appellant independent of the lineup presentation. Trial Transcript p. 69, l. 7-21.

SUMMARY OF THE ARGUMENT

The Appellant argues that the court erred by allowing the admission of eyewitness testimony identifying the Appellant as the perpetrator; however, a review of the record indicates that the court's ruling was correct.

STANDARD OF REVIEW

The reliability of an eyewitness identification is a mixed question of fact and law. State v Liverman, 727 SE2d 422, at 425 (SC 2012). If the evidence only provides one inference, then the admissibility becomes a matter of law for the trial court to decide. Liverman. The trial court's decision regarding the admission of eyewitness identification is reviewed under the abuse of discretion standard. Id.

ARGUMENT

The court correctly admitted the evidence identifying the Appellant because the identity of the Appellant was already known to Ms. Singleton. Further, nothing in the six photo array was unduly suggestive. Finally, given Ms. Singleton's previous knowledge of the Appellant and the lack of suggestion by law enforcement, the evidence of the identification was sufficiently reliable for consideration by the jury.

An accused may challenge the introduction of an identification by requesting a hearing. Neil v Biggers, 409 US 188 (1972). The court is required to hold such a hearing when the accused challenges the identification as the result of undue or improper suggestibility on the part of law enforcement. State v Ramsey, 550 SE2d 294, at 297 (SC 2001). This hearing should be conducted outside the presence of the jury. Ramsey.

If the identification procedure is found to be unduly suggestive, then the court

must determine whether the identification is nonetheless reliable. Biggers, at 198. If found unreliable because of unduly suggestive action by law enforcement, then the court must exclude the identification and any derivative evidence including a subsequent in-court identification. State v Traylor, 600 SE2d 523, at 526 (SC 2004). Conversely, if the procedure is not unduly suggestive, then the inquiry stops and no reliability determination is necessary. Biggers, at 198.

An identification not produced by government involvement does not trigger the Neil v Biggers review. The South Carolina Court of Appeals recognized this distinction in the case of State v. Starks, — SE2d —, 2014 WL 5462548 (SC Ct App. 2014). In Starks, the victim informed law enforcement that she recognized a perpetrator based upon her previous acquaintance with him as a customer at the same store later robbed.

Following the presentation of a single photo, the victim in Starks confirmed this person was the same customer she indicated in her previous discussions with law enforcement.

At trial, the judge in Starks conducted a Neil v Biggers hearing and found the single photo presentation unduly suggestive. However, the trial judge found the identification sufficiently reliable given the victim's previous acquaintance with Starks. The identification was admitted and Starks was convicted.

On review, Chief Judge Few questioned whether a Neil v Biggers hearing was even required given the victim's previous acquaintance with the perpetrator. Starks, at — US — ; also see Perry v New Hampshire, 565 US —, 132 S Ct 716, 736-738 (2012). Nonetheless, the appeals court in Starks affirmed the trial court's ruling. The appeals

court agreed that the single photo presentation was unduly suggestive but reliable because the accuracy of the witness' recognition of Starks "did not depend upon any likelihood of misidentification the police created when she viewed Starks' face during the show-up procedure." Starks.

In the case at bar, the Appellant asserted that the identification procedure was unduly suggestive because law enforcement requested that Ms. Singleton pick out "Ivan 'Buck' Williams." Certainly, this was a suggestion. However, the record demonstrates that Ms. Singleton already recognized the Appellant as the suspect.

Before opening statements, the Court conducted an *in camera* hearing. Trial Transcript, p. 29-37. The State presented the testimony of Detective Perry Singleton. Singleton testified that he presented Ms. Singleton with a six photo array prepared by SLED.

He testified that law enforcement had been given the name of "Buck" as one of the burglars. Trial Transcript p. 30, l. 19-23. Perry also testified that this lineup included a photo of a person named "Buck" in it. Trial Transcript 30, l. 25-, p 31, l. He testified that he told Ms. Singleton to pick out "Ivan Buck Williams." Trial Transcript, p. 31.

Detective Singleton testified that Ms. Singleton then picked the photo of the Appellant. State's Exhibit 14. The State presented no other testimony at this pre-trial hearing. The Appellant did not present any evidence but did cross examine Detective Perry.

The trial court found no suggestibility in the government actions because the Appellant was selected from a six photo array. He found that the six photos were

“remarkably similar.” Trial Transcript, p. 36, l. 16. He did indicate the Appellant’s counsel could cross-examine regarding the “manner in which she picked it out, all of the circumstances and what was communicated to her before the lineup and during the lineup.” Trial Transcript, p. 36, l. 18-20.

Further, the trial court’s ruling is correct because the identification was not the product of government action. Law enforcement merely provided the full name of the perpetrator to Ms Singleton following her statement that she knew the suspect as “Buck.” Ms. Singleton’s selection of the Appellant from the six photo lineup was merely confirmation that Ms. Singleton’s reference to “Buck” referred to the same “Ivan ‘Buck’ Williams” known to law enforcement.

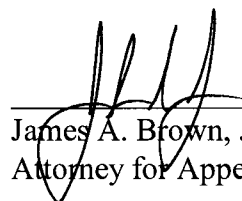
In fact, law enforcement specifically noted that Ms. Singleton already knew “Buck’s” full name by the time she was presented with the photo lineup. Trial Transcript, p. 89, l. 3-18. Given this finding, no such reliability inquiry was necessary. The trial court’s later admission of this identification and a subsequent in-court identification of the Appellant by Ms. Singleton was proper.² Trial Transcript, p. 65, l. 1-25.

CONCLUSION

Thus, in accordance with the requirements of Anders v. California, 386 U.S. 738 (1967), appointed counsel has reviewed the facts and legal issues of this case. It is counsel’s opinion that there are no legal issues that were not properly raised to or disposed of by the trial court, and there are no grounds for an appeal in this case. A copy of this brief has been served on Appellant Williams.

²It is not clear that this issue is properly preserved.

Respectfully Submitted by:



James A. Brown, Jr.
Attorney for Appellant

December 1, 2014
Beaufort, SC

Law Offices of Jim Brown, PA
1600 Burnside St, Suite 100
PO Box 592
Beaufort, SC 29901
(843) 470-0003
jimbrownlaw@hargray.com

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of General Session

The Honorable Michael G. Nettles, Circuit Court Judge

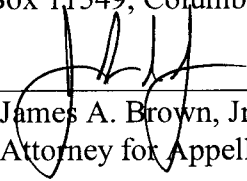
Appellate Case Number 2013-002423

The State,.....Appellee,
v.
Ivan Williams,.....Appellant.

PROOF OF SERVICE

Counsel for Ivan Williams hereby certifies that he has prepared and served an Initial Brief of Appellant and Designation of Matter on this 1st day of December, 2014, upon the State, by depositing a copy, postage pre-paid, in the United States Mail, addressed to Salley W. Elliott, South Carolina Office of the Attorney General, PO Box 11549, Columbia, South Carolina, 29211.

December 1, 2014


James A. Brown, Jr.
Attorney for Appellant

Law Offices of Jim Brown, PA
1600 Burnside St., Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

Opposing Attorney of Record:

Salley W. Elliott,
Senior Assistant Deputy Attorney General
SC Office of the Attorney General
PO Box 11549
Columbia, SC 29211-11549
(803) 734-1890

RECEIVED

DEC 03 2014

SC Court of Appeals

Law Offices of Jim Brown, P.A.

1600 Burnside Street, Suite 100 • P.O. Box 592

Beaufort, SC 29901-0592

Phone: (843) 470-0003 Fax: (843) 470-0004

jimbrownlaw@hargray.com

www.attorneyjimbrown.com

December 1, 2014

The Honorable Jenny Abbott Kitchings
Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

RE: Ivan Williams v. State of South Carolina
Appellate Case No. 2013-002423

Ms. Kitchings:

Under cover of this letter, find enclosed a copy of the Appellant's Initial Brief, Designation of Matter to be Included in Record on Appeal and the Proof of Service with regard to the same. Thank you for your assistance with this matter.

Sincerely,



Jim Brown

with enclosures as indicated above

cc: Salley W. Elliott, Sr. Asst. Deputy Attorney General, w/enclosures
Ivan Williams, w/enclosures

RECEIVED

DEC 03 2014

SC Court of Appeals



Law Offices of Jim Brown, P.A.
PO Box 592
Beaufort, SC 29901

RECEIVED

DEC 03 2014

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Court of Appeals
PO Box 11629
Columbia, South Carolina 29211