

State of South Carolina
In The S.C. Supreme Court

Appeal From Hampton County
Court of General Sessions

Appellate Case #2013-002424

RECEIVED

APR 08 2016

SC Court of Appeals

Ivan Williams,.....Appellant,

V.

The State,.....Respondent.

Appellant's Pro-Se Brief

Ivan Williams, #357881
PCI, Q2 B124
430 Oaklawn Rd.
Pelzer, S.C. 29669

ISSUE

- 1) Was The Trial Court In Error For Allowing The Admission Of Eyewitness Identification Evidence?
- 2) Did The Trial Court Err By Allowing Admission Of An In-Court Identification Procedure Which Was Unduly Suggestive By Two Witnesses; Which Improperly Bolstered The Victim's Testimony?
- 3) Trial Court Erred By Allowing An In-Court Identification Because Of Interviewing Factors Which Bolstered The Victim's Testimony.

STATEMENT OF THE CASE

On January 26, 2012, the Appellant was arrested and charged with Burglary in the first degree. 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. The court sentenced the Appellant to a fifteen (15) year term of incarceration. A Notice of Appeal was filed on November 8, 2013 and this Pro-se brief follows after a filing of an Anders Brief by his attorney.

1 undersigned counsel was hired for the appeal.

STATEMENT OF THE FACTS

According to the testimony by the state, allege victim Ms. Valerie Singleton returned home on June 27, 2011 from a social outing. She arrived at her house and entered her home through the front door.

Once inside, she then heard noise coming from her bedroom, when she investigated! She encountered two persons standing in the bedroom. She told them they needed to leave. The two suspects quickly existed the home. She then phoned the police.

During the investigation, she informed first responder Deputy Elmquist which Detective Booker signed off on that the victim stated that she saw both suspects around the area, that she had seen them uptown, but does not know the suspect's names. Detective P. Singleton 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". The victim Ms. Singleton was shown a six photo array. She picked out the Appellant after suggestiveness from the array as one of the perpetrators of the burglary.

Appellant's trial attorney challenged this identification during a pre-trial hearing, which was denied. The judge's 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 it's admissibility.

During trial, Ms. Singleton identified the Appellant. This identification was the primary evidence implicating the Appellant as no fingerprints or DNA was found and no admissions by the Appellant was made.

SUMMARY OF THE ARGUMENT

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

STANDARD OF REVIEW

The reliability of an eyewitness identification is a mixed question of fact and law. State v. Liverman, 727 S.E.2d 422, at 425 (S.C. 2012). If the evidence only provides one inference, then the admissibility becomes a matter of law for the trial court to decide. Liverman.

The court incorrectly admitted the evidence identifying the Appellant because the identity of the Appellant was not known to Ms. Singleton prior to his arrest.

Finally, given Ms. Singleton's lack of knowledge of the appellant and the suggestiveness by law enforcement detectives, the evidence of the identification was sufficiently unreliable for consideration by the jury.

The Appellant challenged the introduction of the alleged identification by requesting a hearing. Neil v. Biggers, 409 U.S. 188 (1972). The court held a Neil Biggers hearing because of undue and improper suggestibility on part of the detectives that investigated the case; outside the presence of the jury.

The identification procedure that was employed by the detectives was unduly suggestive and unreliable. Biggers, at 198. The trial court should have excluded the identification and any derivative evidence including a subsequent in-court identification. State v. Traylor, 600 S.E.2d 523 at 526 (S.C. 2004).

In the case at bar, the Appellant asserts that the identification procedure was unduly suggestive because law enforcement requested that Ms. Singleton pick out Ivan Buck Williams. This was highly suggestive. The record in trial court's transcript pg. #81 L. 15-19 demonstrates that Ms. Singleton does not know the suspects names.

Detective P. 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. Perry also testified that this line-up included a photo of a person named "Buck" in it. He further testified that he told Ms. Singleton to pick out "Ivan Buck Williams" because the six photos were similar, the trial court found no suggestibility in the detective's action. The trial court turned a blind eye regarding the manner in which she picked it out, and all the circumstances and what was communicated to her before the line-up and during the line-up.

The trial court's ruling is incorrect because the identification was the product of government/detective's action. Detective's provided the full name of the perpetrator to Ms. Singleton.

Law enforcement specifically noted that Ms. Singleton already knew "Bucks" full name by the time she was presented with the photo line-up because Ivan Buck Williams was already known to law enforcement. The trial court's later admission of this identification and a subsequent in-court identification of the Appellant by Ms. Singleton was improper. Case should be vacated for failure to suppress identification procedure.

The trial court erred by allowing admission of an in-court identification procedure which was unduly suggestive by two witnesses/detectives; which improperly bolstered the victim's testimony.

In State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000), the S.C. Supreme Court held that an eyewitness identification which is unreliable because of suggestive procedures is constitutionally inadmissible as a matter of law. An in-court identification procedure created a very substantial likelihood of irreparable misidentification. State v. Caldwell, supra; State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001).

Under Neil v. Biggers, 409 U.S. 188 (1972), it is a violation of due process to permit an in-court identification to a state agent/detective was so unduly suggestive as to create irreparable misidentification. The U.S. Supreme Court listed a two prong inquiry to determine the admissibility of an out

of court identification. The first issue was if the identification process was unduly suggestive; and the second was if the out-of-court identification nevertheless was so reliable that there was no substantial likelihood of misidentification. **VACATE** conviction and **REMAND** for a new trial.

Did The Trial Court Err By Allowing An In-Court Identification Because Of Intervening Factors Which Bolstered The Victims Testimony?

The trial court erred by allowing an in-court identification because of intervening factors which bolstered the victims testimony. Detective P. Singleton's intervening factors bolstered the victims testimony on page #33 L. 3-25 and page #34 L. 1-12. See also, Pg. #35 L. 3-12, Page #35 L. 22-25.

On page #91 L. 5-8 Investigator asked victim to circle Ivan Buck Williams. Page #92 L. 17-25. Victim told both officers that she knew the identity of the suspect. Pg. #31 L. 21-25. Detective Singleton instructed victim to pick out Ivan Buck Williams. Page #67 L. 11-13. How she identified Buck, on page #71, never told first responder she seen two (2) suspects. On page #82 L. 5 she never called anyone by name.

Under the totality of the circumstances; the identification was not reliable because it was suggestive. The factors that were not considered that should have been considered is the opportunity of the witness to view the criminal at the time of the crime, the witness degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation and the length of time between the crime and the confrontation. Applying these factors should have been used in this case.

The trial court's conclusion's on the critical facts are unsupported by the record and clearly erroneous.

Vacate and **Remand** for new trial.