

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

MAR 15 2017

Honorable Letitia H. Verdin, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STEVEN LEVON WILLIAMS,

APPELLANT

APPELLATE CASE NO 2016-001071

ANDERS BRIEF OF APPELLANT

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in refusing to suppress the suggestive single person show-up identification of Petitioner made by Juan Cabrera because it was unduly suggestive and unreliable and the resulting in-court identification was tainted by the prior suggestive procedure.

STATEMENT OF THE CASE

Petitioner was indicted by the Greenville County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime, and possession of a weapon by a felon. R. 423 - 430.

On May 11-12, 2016, Petitioner proceeded to trial before a jury and the Honorable Letitia H. Verdin. R. 1. Carlyle Steele represented Petitioner and Assistant Solicitors L. Mark Moyer and Walker Miller represented the State. Petitioner was convicted on all counts. R. 412, l. 5 - 413, l. 9. Judge Verdin sentenced Petitioner to life without the possibility of parole. R. 419, l. 14 - 421, l. 10. This appeal follows.

ARGUMENT

The trial judge erred in refusing to suppress the suggestive single person show-up identification of Petitioner made by Juan Cabrera because it was unduly suggestive and unreliable and the resulting in-court identification was tainted by the prior suggestive procedure.

Relevant Facts

On June 6, 2014, Appellant was arrested following a car accident on Old Buncombe Road in Greenville County. Appellant's black Mercedes struck a telephone pole while he was driving a high speed to escape from a white Ford Mustang that pursuing him. Juan Cabrera drove the silver mustang and owned a tire stop on nearby Poinsett Highway. R. 211, ll. 4-9.

Cabrera would testify that he was working alone at his tire shop when two black males in a black Mercedes stopped outside his store. The two men entered. One man pointed a black revolver at Cabrera while the other threatened him with a stun gun. Cabrera panicked and threw about one hundred and fifty dollars into the air to distract the robbers. R. 299, l. 1 - 301, l. 10.

As the robber with the gun picked up the money, the second man and Cabrera began to fight. *Id.* After they collected the money, two men left in the black Mercedes. Unable to find his cell phone or the store's phone, Cabrera got in his silver Ford Mustang and pursued to the black Mercedes. R. 305, l. 1 - 310, l. 22.

During the pursuit, Cabrera briefly stopped and convinced a bystander to call the police for him. Once Cabrera located the Mercedes, he attempted to stop the car by rear ending it. That failed. The black Mercedes then accelerated at a high rate of speed to try to get away from Cabrera. Shortly after the pursuit began the Black Mercedes wrecked into a telephone pole. *Id.*

The front seat passenger fled from the accident, but Appellant remained in the driver's seat. Greenville County Sheriff Deputy Chris McAlmont was the first officer at the accident scene. R. 189, l. 6 - 196, l. 22. He ordered Appellant out of the driver's seat and arrested him

for armed robbery. A firefighter on the scene then reported to McAlmont that he had found a handgun in an open compartment under the driver's seat. *Id.*

The police then had Cabrera make an on the scene single-person identification of Appellant as one of the two men in the armed robbery. R. 78, l. 3 - 110, l. 4. Greenville County Deputy Mark Husk testified that he drove Cabrera to the wreck of the black Mercedes. *Id.* Husk explained to Cabrera that he was there to "identify the suspect." R. 82, l. 10 - 83, l. 9.

Husk testified that - at the time of his identification - Appellant was standing, handcuffed next to another Sheriff's deputy in front of his black Mercedes. *Id.* Cabrera identified Appellant from approximately thirty yards away and reported to Husk that he was extremely confident of his identification. R. 84, l. 6 - 89, l. 18.

Deputy Judson Belding, the deputy standing next to Appellant when Cabrera made his identification, agreed with Husk that Appellant was handcuffed and surrounded by law enforcement at the time of the identification. *Id.* At the *Biggers*¹ hearing, Cabrera claimed that he was "100 percent" certain Appellant was one of the robbers. R. 100, ll. 11-17.

Cabrera admitted Appellant was the only one presented to him for identification, but maintained that "I pick him because I'm 100 percent he is the same person who robbed me in the tire shop." R. 101, ll. 12-21. Defense motioned to suppress Cabrera's identification on the grounds that the police identification procedure was unconstitutionally suggestive and rendered Cabrera's identification of Appellant a foregone conclusion. R. 77, l. 11 - 110, l. 4.

After hearing arguments and testimony, the court refused to suppress the identification. R. 109, l. 2 - 110, l. 4. The court concluded that the identification was reliable despite the highly suggestive method used by law enforcement and the obvious stress of the armed robbery. *Id.*

¹ *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375 (1972).

Discussion

Generally, the decision to admit eyewitness identification is in the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion, or the commission of prejudicial legal error. *State v. Moore*, 343 S.C. 282, 540 S.E.2d 445 (2000). However, an eyewitness identification which is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law. *Caver v. Alabama*, 537 F.2d 1333, 1335 (5th Cir.1976), *cert. denied*, 430 U.S. 910, (1977), *citing Foster v. California*, 394 U.S. 440, 442-43, n. 2 (1969).

Reliability is the linchpin in determining the admissibility of identification testimony. *Id.* at 504, 589 S.E.2d at 785, *citing Manson v. Brathwaite*, 432 U.S. 98, 114, (1977); *State v. Blassingame*, 338 S.C. 240, 251, 525 S.E.2d 535, 541 (Ct. App.1999).

A criminal defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. *State v. Mansfield*, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App.2000); *Stovall v. Denno*, 388 U.S. 293 (1967). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. *Manson v. Brathwaite*, 432 U.S. 98 (1977); *Simmons v. United States*, 390 U.S. 377, (1968); *State v. Stewart*, 275 S.C. 447, 272 S.E.2d 628 (1980).

The burden is on the state to show by clear and convincing evidence that an in-court identification of a defendant was not tainted by suggestive action on the part of police, or, presumably, other state officials. *State v. LaRue*, 271 S.C. 256, 246 S.E.2d 890 (1978). "The central question is whether under the totality of the circumstances the identification was reliable even though the confrontation procedure was suggestive." *State v. Traylor*, 360 S.C. 74, 81, 600

S.E.2d 523, 527 (2004).

The United States Supreme Court has developed a two-prong inquiry to determine the admissibility of an out-of-court identification. *Biggers*, 409 U.S. 188. First, “[a] court must first determine whether the identification process was unduly suggestive.” *Id.*, 409 U.S. at 198; *Moore* 343 S.C. at 286-287, 540 S.E.2d at 447.

The court must next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed ... only if [the procedure] was suggestive need the court consider the second question-whether there was a substantial likelihood of irreparable misidentification. *Id.*; *State v. Brown*, 356 S.C. 496, 589 S.E.2d 781, 784 (Ct. App. 2003); *See Biggers, supra*.

Single person show-ups are particularly disfavored in the law. *Stovall v. Denno*, 388 U.S. 293 (1967) (practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned); see also *State v. Johnson*, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct.App.1993) (single person show-ups are particularly disfavored in the law); *In the Interest of Jamal Rashee A.*, 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992) (taking witness to location where suspects, but no other individuals, are being detained is suggestive).

The identification procedure in the present case was an unduly suggestive single-person show-up. Immediately prior to his identification Cabrera was told that he was going to identify the robbery suspect. R. 81, l. 3 - 87, l. 9. Appellant was the only non-law enforcement at the identification. He was handcuffed and was the only person made available for Cabrera to identify while still under the impact of the traumatic robbery.

Therefore, the trial court was correct in holding that the single person line-up was

suggestive; however the court committed a reversible error in applying the second prong of the *Biggers* analysis because the procedure used created a substantial likelihood of irreparable misidentification. R. 109, l. 2 - 110, l. 4.

CONCLUSION

For the foregoing reasons, Appellant Steven Williams respectfully requests that this Court reverse his convictions and remand this case to the Greenville County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line.

John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of March, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Steven Levon Williams states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Letitia H. Verdin, which was held on May 11 -12, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Steven Levon Williams.

Respectfully Submitted,



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

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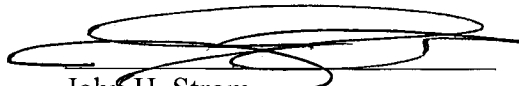
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s): and
- (2) Transcript of May 11-12, 2016 Trial.

I certify that this designation contains no matter which is irrelevant to this appeal.

March 15, 2017


John H. Strom
Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 15, 2017.



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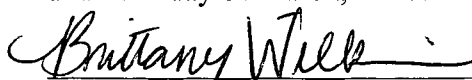
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Steven Levon Williams, #157166, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 15th day of March, 2017.



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of March, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: November 3, 2026.