

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONSON BANKS

APPELLANT

VS.

NO. 2009-KA-0070

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF CONTENTS

STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	4
PROPOSITION: THE DEFENDANT'S CHALLENGE TO THE ADMISSION OF THE IDENTIFICATION TESTIMONY IS PROCEDURALLY BARRED AND PLAINLY WITHOUT SUBSTANTIVE MERIT	4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Neil v. Biggers</i> , 409 U.S. 188 (1972)	4
--	---

STATE CASES

<i>Harris v. State</i> , 977 So.2d 1248 (Miss. App. 2008)	5
---	---

<i>Jordan v. State</i> , 995 So.2d 94, 106 (Miss. 2008)	4
---	---

<i>Lentz v. State</i> , 604 So.2d 243, 249 (Miss. 1992), cited in <i>Martin v. State</i> , 872 So.2d 713, 723 (Miss. 2004)	5
---	---

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONSON BANKS

APPELLANT

VERSUS

NO.2009-KA-0070-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

Ronson Banks was tried in the Circuit Court of Coahoma County on a charge of armed robbery, convicted of robbery, and sentenced to a term of 12 years in the custody of the Mississippi Department of Corrections. (C.P.5-8) Aggrieved by the judgment rendered against him, Banks has perfected an appeal to this Court.

Substantive Facts

Elizabeth Cohens testified that in December 2006, she was employed by Wood Security on Sunflower Street in Clarksdale. On December 12, she was walking home from work at about 10:30 p.m. when she "met this dude" who said "hello" to her. She "said 'hello,' too." Ms. Cohens "looked him up and down" and "kept on walking." As she was

"getting ready to turn off and walk away," she sensed that someone was "behind" her. She then felt a gun against her back. The man demanded that she give him her backpack, and she complied. "[H]e took off with the stuff," and she "jumped in the middle of the street and ... called for help." (T.45-48)

After the police arrived, Ms. Cohens "told them what happened," and that the perpetrator had been "drinking something" from "a Burger King cup." She also informed the officers that her assailant was wearing a blue shirt, "a black hoodie," "some pants that looked like they had fu-fu [sic] on them," and tennis shoes. He also "had a tooth missing in the front." The officers got in the car and ... went looking for him. Shortly afterward, they picked her up and asked her to identify him. According to her, "And I told them, yes, that was him." At trial, she identified her backpack and the items contained therein. (T.48-51)

Ms. Cohens positively identified the defendant as the man who had taken her backpack. (T.48, 51)

On redirect examination, she testified that she had given her backpack to the defendant because she "feared" for her "life." (T.54)

The night of December 12, Officer Steven Poer of the Clarksdale Police Department was "working patrol" when he and Corporal Jason Sims were dispatched to the scene of a reported armed robbery "on State and Sunflower." Officer Poer arrived first. Ms. Cohens gave him a description of her attacker. When Corporal Sims arrived, Officer Poer repeated this description to him and informed him that the robber had "walked south of the Sunflower." Corporal Sims "proceeded south on Sunflower" while Officer Poer continued to take the report from Ms. Cohens. Shortly afterward, Detective Romelle Matthews arrived

on the scene. (T.54-56) When asked whether he had "anything else" to do with this investigation, Officer Poer testified as follows:

Once the investigator arrived on the scene, the investigator spoke to Ms. Cohens, and she gave him an initial statement. And Ms. Cohens had stated she could ... positively identify the person, the robber, if she seen [sic] him again. At that time, Corporal Sims had come on the radio stating he had found a suspect. At that time, Investigator Matthews and Ms. Cohens went in his car, and I followed them, to Center and 16th where Corporal Sims had found the suspect. And whenever we pulled up on the scene, Ms. Cohens stated that he was the guy that robbed her.

(T.56)

Corporal Sims testified that after he received the description of the suspect and learned of the direction in which he was traveling, he "began patrolling the area and attempted to locate him." Three to five minutes later, he "located an individual" matching the description. He and other officers stopped Banks and "put a light on him." Ms. Cohens arrived shortly afterward and identified Banks as the man who had robbed her. After Officer Poer took the defendant into custody, Corporal Sims "began backtracking" in search of Ms. Cohens's backpack. He found it lying in the street nearby. (T.58-61)

Detective Matthews testified that he took the description of the suspect from Ms. Cohens and "gave the information out to the officers." The defendant was apprehended "within minutes," about a block and a half away from the scene of the robbery. As he was taking Ms. Cohens "to the location, she immediately identified him." In Detective Matthews's words, "Before I could even stop the car, she just started yelling, 'that's him, that's him.'" (T.65-66)

The defendant was taken into custody and was informed of his rights. (T.66) He then gave a statement which Detective Matthews summarized as follows:

He stated that he met the lady at that location. He had passed her. He had just came [sic] from the Burger King getting his children some food. As he passed her, he hen ran back up behind her, but he didn't have a gun. He just act [sic] like he had a gun. He admitted to doing— taking the bag and proceeded to go down the street.

(T.66)

The defendant took the stand and admitted that he took the backpack from Ms. Cohens, but denied that displayed or threatened her with a weapon. (T.76-78)

SUMMARY OF THE ARGUMENT

The defendant's challenge to the admission of the identification testimony is procedurally barred by his failure to raise the issue below. Alternatively, the state contends any arguable error is harmless.

PROPOSITION:

THE DEFENDANT'S CHALLENGE TO THE ADMISSION OF THE IDENTIFICATION TESTIMONY IS PROCEDURALLY BARRED AND PLAINLY WITHOUT SUBSTANTIVE MERIT

The sole argument presented on this appeal is that the trial court erred in admitting the identification testimony. The issue was not raised below in any form and may not be raised for the first time on appeal. *Jordan v. State*, 995 So.2d 94, 106 (Miss. 2008) (challenge to identification testimony was barred by defendant's failure to object).

Banks's failure to call the identification testimony into question leaves this Court with nothing to review. Specifically, the record lacks an analysis of the *Neil v. Biggers*¹ factors because the court was never called upon to apply them. The trial court will not be put in

¹409 U.S. 188 (1972).

error on a point not presented to it. E.g., *Harris v. State*, 977 So.2d 1248 (Miss. App. 2008).

Although no further discussion should be required, the state submits for the sake of argument that any conceivable error in admitting this identification testimony clearly would be harmless. See *Lentz v. State*, 604 So.2d 243, 249 (Miss.1992), cited in *Martin v. State*, 872 So.2d 713, 723 (Miss.2004). The defendant admitted that he took the backpack. The only issue was whether he used a weapon. His identity simply was not an issue.²

For these reasons, Banks's proposition should be rejected.

CONCLUSION

The state respectfully submits that the argument presented by Banks has no merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**



BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

²Indeed, defense counsel stated during closing, "[T]here is no dispute whether or not Ms. Cohens' backpack was taken by Mr. Banks. Never contested those things. What this dispute is, whether or not Mr. Banks had a gun." (T.100)

CERTIFICATE OF SERVICE

I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Albert B. Smith, III
Circuit Court Judge
P. O. Drawer 478
Cleveland, MS 38732

Honorable Laurence Y. Mellen
District Attorney
115 First Street, Suite 130
Clarksdale, MS 38614

Benjamin A. Suber, Esquire
Attorney At Law
Mississippi Office of Indigent Appeals
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201

This the 22nd day of September, 2009.



DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680