

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONSON BANKS

APPELLANT

V.

NO. 2009-KA-00070-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

Benjamin A. Suber, MS Bar No. [REDACTED]

301 North Lamar Street, Suite 210

Jackson, Mississippi 39201

Telephone: 601-576-4200

Counsel for Ronson Banks

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONSON BANKS

APPELLANT

V.

NO. 2009-KA-00070-COA

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Ronson Banks, Appellant
3. Honorable Laurence Mellen, District Attorney
4. Honorable Albert B. Smith III, Circuit Court Judge

This the 8th day of July, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


BENJAMIN A. SUBER
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39205
Telephone: 601-576-4200

TABLE OF CONTENTS

| | |
|---|-----|
| CERTIFICATE OF INTERESTED PERSONS | i |
| TABLE OF AUTHORITIES | iii |
| STATEMENT OF THE ISSUE | 1 |
| STATEMENT OF THE CASE | 1 |
| FACTS | 3 |
| SUMMARY OF THE ARGUMENT | 3 |
| ARGUMENT | |
| THE IDENTIFICATION PROCESS WAS SO IMPERMISSIBLY SUGGESTIVE THAT BANKS SUFFERED IRREPARABLE MISIDENTIFICATION | 3 |
| CONCLUSION | 7 |
| CERTIFICATE OF SERVICE | 8 |

TABLE OF AUTHORITIES

CASES

| | |
|--|------|
| <i>Foster v. California</i> , 394 U.S. 440, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969) | 4 |
| <i>Johnston v. State</i> , 567 So. 2d 237, 238 (Miss. 1990) | 3 |
| <i>Manson v. Brathwaite</i> , 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) | 5 |
| <i>Neil v. Biggers</i> , 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972) | 5 |
| <i>Roche v. State</i> , 913 So.2d 306, 310 (Miss. 2005) | 4 |
| <i>Shearer v. State</i> , 423 So.2d 824, 826 (Miss. 1983) | 3 |
| <i>Simmons v. United States</i> , 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968) | 4 |
| <i>Stovall v. Denno</i> , 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967) | 5 |
| <i>Weaver v. State</i> , 996 So.2d 142, 144 (Miss. App. 2008) | 6 |
| <i>York v. State</i> , 413 So. 2d 1372,1383 (Miss. 1982) | 4, 5 |

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONSON BANKS

APPELLANT

V.

NO. 2009-KA-00070-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUE

**THE IDENTIFICATION PROCESS WAS SO IMPERMISSIBLY
SUGGESTIVE THAT BANKS SUFFERED IRREPARABLE
MISIDENTIFICATION.**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Coahoma County, Mississippi, and a judgment of conviction of Robbery. Ronson Banks was sentenced to twelve (12) years in the custody of the Department of Corrections, following a jury trial on November 10, 2008, Honorable Albert B. Smith III, presiding. Banks is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On December 12, 2006, Elizabeth Cohens (Cohens) was walking home from her job. Tr. 47. As she was walking, Cohens met an individual in the street, they both said hello and Cohens kept on walking home. *Id.* Cohens testified that she heard somebody running behind her and she turned around and a guy had an alleged gun to her back. *Id.* The man asked Cohens for her backpack and then asked for her cell phone. *Id.*

The man took off with her stuff and Cohens walked across the street and called for help. Tr. 48. The police then arrived and Cohens described what had happened. *Id.* Cohens stated that after the man took all of her stuff, he walked back down the street. *Id.* She further stated that he had a Burger King cup in his hand. *Id.*

Cohens described that the man was wearing a blue shirt, with a black hoodie on top. Tr. 49. The man was wearing pants that had something on them, some tennis shoes, and was missing a tooth. *Id.* The police immediately went looking for the man that allegedly robbed Cohens. Tr. 50. Officer Sims observed a man with a Burger King bag and was later identified as Ronson Banks (Banks). Tr. 59. Investigator Matthews immediately brought Cohens to where Banks was located and Cohens identified Banks as the person responsible for allegedly robbing her. *Id.*

According to the testimony of Banks, he was coming home from Burger King and he passed a lady. Tr. 77. He said something told him to turn around and snatch her book bag. *Id.* He took her book bag and told her not to call the police and he ran. *Id.* He did not put

a gun to her back. Tr. 78. Banks continued to stated that he did not threaten her with a gun and then he had never even owned a gun. *Id.*

After snatching the book bag, Banks open the book bag and threw out the paper, book, and clock on the ground and ran. *Id.* An officer then picked him up down the street. *Id.* He was a few minutes later identified by Cohens as the man that allegedly took her book bag..

Banks was arrested and indicted for armed robbery. Banks was found guilty of robbery and is currently incarcerated with the Mississippi Department of Corrections.

SUMMARY OF THE ARGUMENT

The identification procedures performed by the police department were unfairly suggestive, all identification stemming from the show up procedure should have been inadmissible at trial. For those reason, this Honorable Court should reverse Ronson Banks conviction and remand for a new trial without inadmissible evidence used to convict him.

ARGUMENT

ISSUE

THE IDENTIFICATION PROCESS WAS SO IMPERMISSIBLY SUGGESTIVE THAT BANKS SUFFERED IRREPARABLE MISIDENTIFICATION.

The standard of review on appeal regarding the admissibility of evidence is abuse of discretion. *Johnston v. State*, 567 So. 2d 237, 238 (Miss. 1990). Unless a trial court abuses its discretion in admitting the specific evidence, the appellate court will not find error. *Shearer v. State*, 423 So.2d 824, 826 (Miss. 1983).

The standard of review for trial court decision concerning pretrial identification is “whether or not substantial credible evidence supports the trial court's findings that, considering the totality of the circumstances, in-court identification testimony was not impermissibly tainted.” *Roche v. State*, 913 So.2d 306, 310 (Miss. 2005). The appellate court will only disturb the trial court's order where there is an absence of substantial credible evidence supporting it. *Id.*

After the incident, Elizabeth Cohen called the police. Tr. 48. The police responded to the call and Cohen gave the police a description of the alleged robber. Tr. 55. Officer Sims on route to the location of the alleged robbery, was advised of a description of the suspect and the direction that he went. Tr. 58. Officer Sims, driving through an area subdivision, stopped an individual walking down the street. Tr. 59.

Investigator Matthews brought Cohen to the individual's location. Cohen identified the individual as the alleged robber. *Id.* The individual was Banks. *Id.* Banks was then taken into custody and transported to the police department. *Id.*

“Only pretrial identifications which are suggestive, without necessity for conducting them in such manner, are proscribed. A lineup or series of photographs in which the accused, when compared with the others, is conspicuously singled out in some manner from the others, either from appearance or statements by an officer, is impermissibly suggestive.” *York v. State*, 413 So. 2d 1372,1383 (Miss. 1982); *See Foster v. California*, 394 U.S. 440, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969); *Simmons v. United States*, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968).

“A showup in which the accused is brought by an officer to the eyewitness is likewise impermissibly suggestive where there is no necessity for doing so.” *York* at 413 So.2d 1383. See *Manson v. Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) (impermissibly suggestive); *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972) (same); *Stovall v. Denno*, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967) (not impermissibly suggestive).

“The practice of showing suspects singly to persons for the purpose of identification and not part on a lineup has been widely condemned.” *Stovall v. Denno*, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967); See also, *York v. State*, 413 So. 2d 1372,1381 (Miss. 1982).

As pointed out in *York*, an unnecessarily suggestive pretrial identification does not alone require exclusion of the identification evidence which may be admitted if the identification is reliable under the totality of the circumstances. *York*, 413 So. 2d at 1381.

An impermissibly suggestive pretrial identification does not preclude an in-court identification by an eyewitness who viewed the suspect at the procedure, unless: (1) from the totality of the circumstances surrounding it (2) the identification was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” *Id* at 1383..

In determining the validity of identification testimony, this Court must look to the five factors from *Neil v. Biggers*, 409 U.S. 188, 199-200, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972). These factors were adopted by our Supreme Court in *York*, 413 So.2d at 1383, and are as

follows: (1) “the opportunity of the witness to view the criminal at the time of the crime”; (2) “the witness'[s] degree of attention”; (3) “the accuracy of the witness'[s] prior description of the criminal”; (4) “the level of certainty demonstrated by the witness at the confrontation”; and (5) “the length of time between the crime and the confrontation.” *Weaver v. State*, 996 So.2d 142, 144 (Miss. App. 2008).

Banks was apprehended blocks away from the place where the crime happened. The crime occurred around eleven o'clock that night, which means it was dark outside. Banks did not have possession of a gun as described by Cohens, nor did Banks have Cohens belongs, including the book bag, newspapers, clock, or the book.

Cohens even began identifying Banks as the one who robbed him before she got out of the car to identify him. Tr. 66. It was dark outside during the time of the alleged robbery and it would have been tough for her to view the alleged robber with a degree of attention.

Because the identification procedures performed by the police department were unfairly suggestive, all identification stemming from the show up procedure should have been inadmissible at trial. For those reason, this Honorable Court should reverse Ronson Banks conviction and remand for a new trial without inadmissible evidence used to convict him.

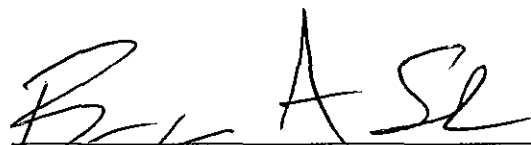
CONCLUSION

Ronson Banks requests that the show-up identification was unfairly suggestive, and therefore the Court should reverse and remand for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Ronson Banks, Appellant

BY:

A handwritten signature in black ink, appearing to read 'B. A. Suber', is written over a horizontal line.

BENJAMIN A. SUBER
MISSISSIPPI BAR NO. [REDACTED]

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 N. Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200

CERTIFICATE OF SERVICE


I, Benjamin A. Suber, Counsel for Ronson Banks, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Albert B. Smith, III
Circuit Court Judge
1556 Edwards Avenue, Suite #2
Cleveland, MS 38732

Honorable Laurence Y. Mellen
District Attorney, District 11
Post Office Box 848
Cleveland, MS 38732

Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 8th day of July, 2009.



Benjamin A. Suber
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200