

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR09-994

RODNEY A. ADKINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** April 14, 2010

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR-07-4624]

HONORABLE MARION ANDREW  
HUMPHREY, JUDGE

AFFIRMED

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## WAYMOND M. BROWN, Judge

Appellant Rodney Adkins was convicted of aggravated robbery and felony theft of property. He was sentenced as a habitual offender to forty-five years' imprisonment for aggravated robbery and to forty years' imprisonment for theft of property. The sentences were run concurrently for an aggregate term of forty-five years in the Arkansas Department of Correction. Adkins argues on appeal that the trial court erred by denying his motion to suppress the victim's pretrial identification of him. He also contends that the victim should not have been allowed to make an in-court identification due to the suggestive nature of the photo line-up that tainted any subsequent identifications of him. We affirm.

Patrick Chinemerem Mbawuiké met Jennifer Ramsey at Walgreens in Southwest Little Rock at approximately 9:00 p.m. on September 17, 2007. Mbawuiké wished to purchase

Ramsey's 2001 Toyota Camry. Mbawuike had concerns about the appearance of the vehicle and wanted to take it for a test drive before he purchased it. Ramsey asked Mbawuike to buy her something to drink and directed Mbawuike to a parking lot located down the street from Walgreens. She told Mbawuike that her uncle owned a liquor store or bar at the location. Mbawuike parked the vehicle, and Ramsey exited the car. Adkins immediately jumped in the front seat of the vehicle with a knife. He placed the knife to Mbawuike's neck and ordered Mbawuike to give him his wallet. Ramsey got into the back of the vehicle, and Adkins ordered Mbawuike to drive the vehicle. After driving around for about ten minutes, Mbawuike refused to drive any farther. At that point, Adkins exited the vehicle and ran off. Mbawuike returned to Walgreens, cancelled his credit cards, and called the police. Ramsey drove away when she was unsuccessful in convincing Mbawuike not to call the police; however, Mbawuike was able to write down Ramsey's license plate number and give it to the police. Mbawuike told police officers that he was robbed at knife point by a white male in his early- to mid-thirties. Mbawuike described the suspect as approximately two hundred pounds and five feet ten inches tall.

Using the tag number provided by Mbawuike, the police were able to identify Ramsey as the owner. They made contact with Ramsey's parents, who gave them Adkins's name. The officers pulled up Adkins's driver's license photo and placed it in a photo spread with five other individuals. Mbawuike came to the police station on September 24, 2007, and

identified Adkins as the man who robbed him on September 17, 2007. Mbawuike stated that he was 100 percent sure that Adkins was the perpetrator.

Adkins filed a motion to have Mbawuike's pretrial identification of him suppressed. A hearing took place on April 17, 2009. Mbawuike testified that Adkins sat in the front passenger seat of the car and that he could see Adkins in his peripheral vision. He also stated that he got a look at Adkins when Adkins jumped into the car. Mbawuike said that Detective Robert Martin of the Little Rock Police Department showed him a photo line-up, and he was able to pick Adkins out of that line-up. Mbawuike stated that Detective Martin did not tell him that the person who robbed him was in the photo line-up and that he did not make any suggestions to him about whom he should pick. Mbawuike testified that he chose number three because that was the person who pointed a knife to his throat and robbed him. He stated that he was positive that Adkins was the perpetrator.

On cross-examination, Mbawuike stated that he was able to look at Adkins's face when he jumped into the car. Mbawuike acknowledged that Adkins had the "biggest smile" in the photo line-up and that his "entire head isn't in the picture." However, on redirect, he stated that he was "100 percent sure" that Adkins was the person who robbed him.

Detective Martin testified that he prepared the photo spread with Adkins's photo. According to Martin, he placed Adkins with "five other similar looking white males" and showed it to Mbawuike. He stated that Mbawuike immediately picked Adkins as the perpetrator. Mbawuike told Martin that he was certain that Adkins was the person.

At the conclusion of the hearing, Adkins's attorney stressed his concerns about the photo line-up. He stated, "I think it's very clear that the one defendant who is on there smiling like a Cheshire cat is the one person who was picked out of the lineup. And it's suggestive, and it's not reliable, and I would ask that the Court suppress it today." The court denied the motion.

Adkins's jury trial took place on May 21, 2009. His attorney renewed his motion to suppress the photo line-up at the beginning of the hearing. The motion was denied, and Mbawuike testified about his encounter with Adkins. Adkins's attorney objected to Mbawuike identifying Adkins at trial based upon the suggestive nature of the photo line-up. The objection was overruled, and Mbawuike identified Adkins as the person who robbed him on September 17, 2007. The jury found Adkins guilty of aggravated robbery and felony theft of property. Adkins was sentenced to an aggregate term of forty-five years' imprisonment. This appeal followed.

Adkins argues that the trial court erred by denying his motion to suppress the pretrial identification of him by Mbawuike. He further claims that the suggestive pretrial identification tainted any subsequent identifications of him at trial. According to Adkins, the pretrial identification was unduly suggestive because his photo was the only one that showed a person grinning with his head cocked to the side and because he appeared to be farther away from the camera than the other individuals in the photo line-up.

In *Bradley v. State*,<sup>1</sup> this court laid out the test for pretrial identifications:

A pretrial identification violates the Due Process Clause when there are suggestive elements that make it all but inevitable that the victim will identify one person as the culprit. In determining whether an in-court identification is admissible, the court looks first at whether the pretrial identification procedure was unnecessarily suggestive or is otherwise constitutionally suspect, and it is the appellant's burden to show that the pretrial identification is suspect. Reliability is the linchpin in determining the admissibility of identification testimony. Even when an identification procedure is impermissibly suggestive, the trial court may determine that, under the totality of the circumstances, the identification was sufficiently reliable for the matter to be submitted to the fact finder, and then it is for the fact finder to decide the weight the identification testimony should be given. In determining reliability, the following factors are considered: (1) the prior opportunity of the witness to observe the alleged act; (2) the accuracy of the prior description of the accused; (3) any identification of another person prior to the pretrial identification procedure; (4) the level of certainty demonstrated at the confrontation; (5) the failure of the witness to identify the defendant on a prior occasion; and (6) the lapse of time between the alleged act and the pretrial identification procedure. We do not reverse a trial court's ruling on the admissibility of identification evidence unless it is clearly erroneous, and we do not inject ourselves into the process of determining reliability unless there is a very substantial likelihood of irreparable misidentification.

(Internal citations omitted.)

Adkins has been unable to meet his burden of showing that the pretrial identification procedure was unduly suggestive. And even if he was able to meet his burden, the pretrial identification was reliable under the totality of the circumstances. Mbawuiké was able to get a good look at the perpetrator when he entered the car; Mbawuiké gave a description in line with Adkins's physical appearance; Mbawuiké only identified Adkins as the person who robbed him; Mbawuiké insisted that he was 100 percent sure that Adkins was the perpetrator; Mbawuiké did not fail to identify Adkins on a prior occasion; and Mbawuiké identified

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<sup>1</sup>2009 Ark. App. 714, 370 S.W.3d 263.

Cite as 2010 Ark. App. 328

Adkins in a photo line-up only seven days after his encounter with Adkins. The trial court's decision to deny Adkins's motion to suppress Mbawuike's pretrial and in-court identification was not clearly erroneous. Therefore, we affirm.

Affirmed.

VAUGHT, C.J., and PITTMAN, J., agree.