

Cite as 2018 Ark. App. 534

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-18-239

OTIS DANIELS

APPELLEE

V.

STATE OF ARKANSAS

APPELLANT

Opinion Delivered: November 7, 2018

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. 35CR-14-258]

HONORABLE ALEX GUYNN,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Otis Daniels appeals his convictions of aggravated robbery and theft of property. On appeal, Daniels argues that the circuit court erred by allowing the use of a photo lineup in violation of Arkansas Rule of Criminal Procedure 17.1(a)(v) (2017). We affirm.

On June 4, 2014, the State charged Daniels with aggravated robbery and theft of property. The charges related to a robbery at Popeyes restaurant in Pine Bluff on April 30, 2014. The case proceeded to a jury trial on July 31 and August 1, 2017.

At trial, Detective Melvin Cawthon testified that on April 30, 2014, he responded to a call concerning an incident at Popeyes restaurant. He explained that on his way to Popeyes, he saw Daniels fleeing the scene. Cawthon held Daniels at gunpoint and discovered a large amount of money as well as white gloves on his person. The State

introduced a surveillance video of the incident that showed one of the suspects wearing white gloves and blue-and-black athletic shoes.

Sergeant Cassandra McAfee testified that she interviewed Daniels on May 1, 2014, and that he was wearing blue-and-black athletic shoes. The interview was videotaped and played for the jury at trial. In the interview, Daniels admitted his involvement in the Popeyes robbery. Specifically, he stated that he had acted as a lookout while his accomplices robbed the restaurant. During the interview, McAfee showed Daniels a photo lineup of several individuals and asked him whether any of the individuals were involved in the robbery. The recording shows that Daniels identified one person in the photo. McAfee then testified that the person in the photo was Antonio Bailey, a former employee of Popeyes.¹

Daniels's attorney objected to any questions concerning Daniels's identification of the individual in the photo lineup. He asserted that he had never seen the photo and that the photo was not included in the case file. He further stated that he sent a letter requesting the photo but that the State had failed to send him a copy. The State responded that a black-and-white copy of the photo lineup was in the case file and also informed the court that it did not seek to introduce the photo into evidence. The court denied Daniels's objection, finding that Daniels had failed to raise the issue at the omnibus hearing.

The jury convicted Daniels of aggravated robbery and theft of property. Daniels was sentenced to 120 months' imprisonment for aggravated robbery and 12 months' imprisonment for theft of property, to run concurrently.

¹At the time of Daniels's trial, the State had also charged Bailey with crimes associated with the robbery at Popeyes, but Bailey's case had not been tried.

Daniels timely appealed his convictions to this court. On appeal, Daniels argues that the circuit court erred by allowing the use of the photo lineup in violation of Arkansas Rule of Criminal Procedure 17.1(a)(v). Specifically, he argues that he timely requested a copy of the photo in his October 29, 2014 motion for discovery when he asked the State for “all books, papers, documents, photographs, or tangible objects which the Prosecuting Attorney intends to use in any hearing or at the trial.” He asserts that because the State did not produce the photo, he assumed the photo did not exist or was not going to be used at trial. He asserts that the circuit court unfairly placed the burden on him to discover the photo.

Arkansas Rule of Criminal Procedure 17.1(a)(v) imposes a duty on the State to disclose “any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in any hearing or at trial or which were obtained from or belong to the defendant.” In order to reverse on appeal, an appellant must make a showing of prejudice in the circuit court’s ruling on the discovery violation. *Id.* If there is a discovery violation, the choice of an appropriate sanction is within the circuit court’s discretion. *Id.* See also Ark. R. Crim. P. 19.7(a) (permissible sanctions for discovery violations). On appeal, the key in determining whether a reversible discovery violation exists is whether the appellant was prejudiced by the prosecutor’s failure to disclose. *Bray v. State*, 322 Ark. 178, 908 S.W.2d 88 (1995). This means that the appellant must demonstrate a reasonable probability that the result would have been different had the information been disclosed. *Cornett v. State*, 2012 Ark. App. 106, 389 S.W.3d 47. These standards require a showing that the omission was sufficient to undermine confidence in the outcome of the trial. *Id.*

In this case, we hold that Daniels has not established a reversible error. Daniels offers no argument how he was prejudiced by the State’s alleged failure to disclose the photo lineup. He claims that he assumed that either the photo did not exist or it was not going to be used at trial. However, he fails to demonstrate how the photo would have affected the outcome of the trial. The issue of Daniels’s identifying another person involved in the robbery by using a photo lineup was completely tangential to the matter of Daniels’s guilt or innocence. The evidence presented was overwhelming—particularly due to Daniels’s recorded confession, his apprehension near the scene of the robbery, and his unexplained possession of several hundred dollars. Accordingly, because Daniels fails to offer how he was prejudiced by the State’s alleged failure to produce the photo lineup, we must affirm his convictions.

Affirmed.

HARRISON and BROWN, JJ., agree.

Robert M. “Robby” Golden, for appellant.

Leslie Rutledge, Att’y Gen., by: *David L. Eanes, Jr.*, Ass’t Att’y Gen., for appellee.