

Marvin HENDERSON v. STATE of Arkansas

CR 85-193

705 S.W.2d 14

Supreme Court of Arkansas
Opinion delivered March 10, 1986

CRIMINAL LAW — AGGRAVATED ROBBERY — SUFFICIENT EVIDENCE OF APPELLANT'S IDENTIFICATION TO SUBMIT CASE TO THE JURY. — Where the evidence was that the robber had a distinctive voice, like appellant's, and he spoke frequently to the employees as he shepherded them around the restaurant, first to the safe, then to the

walk-in; that the robber had a peculiar shaped head, like appellant's, described as oblong and visible under a close fitting ski mask; and that the robber knew the location of the safe and its contents, something appellant would have known, having been employed by the restaurant some months earlier, the proof of identification of appellant was more than sufficient to submit the issue to the jury.

Appeal from Pulaski Circuit Court, Fourth Division; *John Langston*, Judge; affirmed.

Darrell F. Brown & Associates, P.A., for appellant.

Steve Clark, Att'y Gen., by: *Theodore Holder*, Asst. Att'y Gen., for appellee.

STEELE HAYS, Justice. Marvin Henderson appeals from a conviction of aggravated robbery and theft of property upon the single ground that the evidence against him is insufficient as a matter of law. We affirm the judgment.

Three employees of Bojangles' restaurant in Little Rock testified that on the morning of July 15, 1984 an armed man wearing a ski mask approached them as they opened the restaurant for business. They said he guided them to the safe, knew the exact location of money bags, and gave other indications that he was familiar with the restaurant and its operation.

All three employees identified appellant as the robber. They were able to recognize him by an oblong shaped head under a tight fitting ski mask and by his voice, described as "very crisp and clear." They said the man was relaxed and sure of himself. One of the employees testified that as the robber was collecting the money he realized from his voice and the peculiar shape of his head the robber was a fellow student at Philander Smith College. The witness identified appellant as the same man. The state proved as well that appellant had been a manager trainee at Bojangles in 1983.

Appellant argues that the verdict must be supported by substantial evidence as defined in *Heard v. State*, 284 Ark. 457, 683 S.W.2d 232 (1985) and *Boone v. State*, 282 Ark. 274, 688 S.W.2d 17 (1984). He maintains that identification by voice and the shape of one's head fails to constitute substantial evidence as a matter of law. We considered a similar argument in *Wilson v. State*, 282 Ark. 551, 669 S.W.2d 889 (1984), and held the proof

was sufficient to submit the case to the jury.

[1] The proof in this case was that the appellant had a distinctive voice and that he spoke frequently to the employees as he shepherded them around the restaurant, first to the safe, then to the walk-in. That identifying feature was reinforced by testimony that the man who robbed the restaurant had a peculiarly shaped head, described as oblong and visible under a close fitting ski mask. There was also testimony that the robber knew the location of the safe and contents which, coupled with the fact that appellant had been employed by Bojangles some months earlier, renders the proof of identification of appellant as more than sufficient to submit the issue to the jury. *Yandell v. State*, 262 Ark. 195, 555 S.W.2d 561 (1977).

Affirmed.

PURTLE, J., not participating.
