

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLEVELAND EVANS,

Defendant-Appellant.

UNPUBLISHED

July 16, 2002

No. 226511

Wayne Circuit Court

LC No. 99-007724

Before: Zahra, P.J., and Cavanagh and White, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

The identification testimony of the victims was the only evidence linking defendant to the robberies. He was not seen near the area. He was not chased from the area. He was not found in possession of any stolen property. He had not disposed of any stolen property. He was not found with clothing resembling that worn in either robbery. He was not previously known by the victims and recognized during the robberies. The victims gave differing descriptions regarding the height of the robber. Snaden described a small man, similar in stature to defendant. Styles described a larger man. Other witnesses to the Snaden robbery described the robber as being larger than Snaden did and than defendant is. Although defendant admitted to being laid off, there was evidence that he had received an unemployment check and that when he needed money in the past, he pawned a particular necklace, which he owned. Snaden testified that two days after she was robbed, she observed defendant in his car in the parking lot of a pawn shop and recognized him as the man who robbed her. She recorded his license plate number and reported it to the police. Defendant was then arrested and a lineup was held. Snaden identified defendant immediately and Styles made a somewhat tentative identification. Defendant was found not guilty of the Styles robbery.

The jury was apparently persuaded by the certainty of Snaden's identification, and her description of the robber, although other witnesses thought he was taller. There was no other evidence upon which to convict. Understanding the importance of the identification testimony, defendant sought to retain and present the testimony of an expert on eyewitness identification. Specifically, defendant identified to the court the issue of the certainty of the witness. Defendant explained that while the common person believes that the more certain the witness is of the identification, the greater the likelihood of accuracy, expert studies indicate that in fact there is no such correlation. In voir dire, jury members confirmed that they shared the belief attributed to them by defense counsel. During trial, counsel again sought leave to present the expert

testimony. Without a hearing on the matter, the court expressed its opinion that the testimony would be “junk science” and again denied the motion.

In the particular circumstances presented, I conclude that defendant made an adequate showing that the expert was necessary to his defense, and that the trial court abused its discretion in summarily denying the request. I would remand for a hearing to permit defendant to present the witness’ testimony, for the court to make a decision on admissibility based on the record made on remand, and for a new trial if the court determines that the testimony is sufficiently reliable to be admissible.

I agree that none of the other claims of error warrant reversal.

/s/ Helene N. White