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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0670

Jessie James Watkins

v.

State of Alabama

Appeal from Madison Circuit Court
(CC-19-219)

WINDOM, Presiding Judge.

Jessie James Watkins appeals his convictions for two counts of first-degree robbery. See § 13A-8-41(a)(1), Ala. Code 1975. Watkins was

sentenced as a habitual felony offender to life in prison without the possibility of parole for each count. See § 13A-5-9(c)(4), Ala. Code 1975.

On the night of July 20, 2018, Leshawn Kelley was working as a guest-services agent at the Value Place Inn motel in Huntsville. A black male entered the motel and approached the front desk. Kelley asked the male if she could help him; the male told her "to be quiet and give him the money." (R. 240.) Kelley stared at him. The male, now brandishing a knife, asked, "You think I'm playing," and jumped over the desk. (R. 240.) Kelley gave the male cash from the drawer and several rolls of quarters from the safe. The male then demanded Kelley's personal money, and she handed him some cash from her back pocket.

At that point, Frank Bass, a long-term resident of the motel, approached the counter seeking trash bags. The male told Bass, " 'We ain't got no bags. Go on and leave.' " (R. 246.) As the male turned to cut the cord of the front-desk telephone, Kelley fled. Kelley was able to call emergency 911 from one of the motel rooms. Kelley described the robber as a black male in his 40s with facial hair, wearing a hat, sunglasses, a

gray shirt, and black or blue pants. Meanwhile, the male exited the motel, heading in the direction of a La Quinta Inn, which was next door.

Officer Krista McCabe and Officer Taylor Stegall of the Huntsville Police Department responded to the scene in less than a minute of the emergency dispatch about the robbery. Because other officers were directed to attend to Kelley, Officer McCabe elected to survey the surrounding area. Officer McCabe drove around the rear of the Value Place Inn, where she first observed Watkins. Watkins, who was wearing black shorts and a gray shirt, was walking in Officer McCabe's direction from the rear of the La Quinta Inn. Officer McCabe confirmed that Watkins matched the general description of the robber provided by dispatch, exited her patrol vehicle, and summoned Watkins to her. Watkins walked towards Officer McCabe but as he neared her, he sidestepped her and sprinted toward a nearby wooded area.

Officer McCabe and Officer Stegall along with other officers in the area chased Watkins. Officer Stegall incapacitated Watkins with his taser. Watkins was lying on his stomach when the officers reached him; Officer Stegall stated that it was a struggle to control Watkins's hands

because Watkins was fighting to keep his hands under his chest. Once Watkins was placed in handcuffs, the officers rolled him onto his back. Officer McCabe testified that she saw cash and coins on the ground where Watkins had been lying facedown. Watkins told the officers that the money was not his. Officer Stegall searched Watkins and found more cash and coins in a front pocket of his shorts. Officer Stegall placed the cash into an evidence bag but left the coins in Watkins's pocket.

Watkins was placed in the back of Officer Stegall's patrol vehicle. There, Watkins was captured on the interior camera of the patrol vehicle removing a number of quarters from his pockets and dumping them in the backseat area of the patrol vehicle. Officer Stegall recovered those quarters and added them to the evidence bag. Officer Stegall asked Watkins about the coins and, once again, Watkins denied that the coins belonged to him. In total, Officer Stegall recovered $157 in cash and $39.85 – 159 quarters and 1 dime – in coins.

Investigator James Rucker went to the La Quinta Inn motel, where he was able to view various recordings captured by the motel's video surveillance system. Inv. Rucker saw the robber on one of the recordings,

still dressed as originally described by Kelley, walking down an exterior walkway toward the back of the motel. While viewing a recording from a camera at the rear of the motel, Inv. Rucker observed the robber stopping at a trash can and disposing of various items of clothing. From there, the robber began walking back toward the Value Place Inn. Inv. Rucker inspected the trash can and found, among other things, a shirt, pants, a hat, a backpack, and glasses. Inv. Rucker described them as being "the exact same" items seen on the robber in the surveillance footage from the Value Place Inn robbery. (R. 374.)

Officer Will Hall, a K-9 officer, arrived at the scene with his canine, Ammo. Ammo was taken to the west side of the motel, which was the direction the robber had fled. Ammo picked up a scent in a grassy area between the Value Place Inn and the La Quinta Inn. Ammo followed the scent to the trash can at the rear of the La Quinta Inn and then back toward the wooded area behind the Value Place Inn, which is where Watkins was apprehended.

Before departing for the police station, Officer Stegall drove Watkins to the front of the motel where Kelley and Bass were speaking with other

officers. Kelley was shown a picture of Watkins on a personal tablet computer;[1] although she said he looked similar to the robber, she could not positively identify his photograph. Bass was asked by an officer if he could identify the robber, and Bass replied that he could. At the officer's prompting, Bass walked by Officer Stegall's patrol vehicle, saw Watkins in the backseat, and identified him as the robber. Investigator Rucker then had Watkins removed from the patrol vehicle and had an officer illuminate Watkins's face with a flashlight; Bass again positively identified Watkins. Bass also identified Watkins at trial.

On appeal, Watkins argues: 1) that the circuit court erred in denying his motion to suppress evidence related to his pretrial identification and 2) that his convictions for two counts of robbery violate the Double Jeopardy Clause.

I.

Watkins first argues that the circuit court erred in denying his motion to suppress evidence related to his pretrial identification. Watkins

[1]The picture of Watkins was drawn from a database that contained images from State-issued identifications.

alleged in his motion that his pretrial identification was by the use of a one-man showup. Watkins asserted that this method of identification was impermissibly suggestive and that, therefore, the pretrial identification, as well as an in-court identification, was due to be suppressed.

As an initial matter, although Watkins challenged Kelley's identification below and reasserts his challenge on appeal, it does not appear that Kelley made an identification. Following the robbery, officers, in a procedure akin to a one-man showup, presented Kelley with a single image of Watkins and asked if she could identify him. Kelley's testimony was clear, however, that she did not positively identify Watkins that evening. Instead, she told officers only that he looked similar to the robber. Kelley's in-court "identification" was no more definitive: "Well, I can't say that I saw his eyes because I didn't see his eyes. But he has – he was the same height and all. Looks like he may have a little more hair on his head." (R. 250.) Of course, the jury viewed relatively clear surveillance footage of the robbery and, consequently, could have readily determined with or without Kelley's testimony that Watkins, as he sat in

court, looked similar to the robber. And Kelley was thoroughly cross-examined on her inability to positively identify Watkins.

That said, Kelley did testify that she had identified Watkins prior to trial. Specifically, Kelley explained that she had viewed images of arrested individuals on "Jail View," a web-based inmate search provided by the Madison County Sheriff's Office. Kelley stated that she saw an image of Watkins on Jail View and determined he "looked exactly like" the robber. (R. 268.) It is not at all clear, however, that a challenge to this identification is properly before this Court. It does not appear that the parties were aware of Kelley's identification on Jail View, and it was not mentioned in Watkins's motion to suppress or otherwise referenced at the hearing on Watkins's motion; Watkins makes only a passing reference to it in his brief. Further, the identification was first raised not by the State, but by Kelley in response to cross-examination. (R. 266.) Finally, Kelley visited the Jail View web site on her own volition, and suppression is

appropriate only to remedy misconduct by the State. See Lam Luong v. State, 199 So. 3d 173, 210 (Ala. Crim. App. 2015).[2]

Bass, on the other hand, did make a clear pretrial identification of Watkins, as well as an in-court identification. In seeking to have Bass identify the robber, the officers used a procedure that has been criticized as being suggestive – a one-man showup. See Ex parte Frazier, 729 So. 2d 253, 255 (Ala. 1998). The hazards attendant with such a procedure are well established:

> "The danger inherent in a one-man showup, where a witness is shown a single suspect and asked, 'Is that the man?' is twofold. First, a one-man showup conveys a clear message that 'the police suspect this man.' Williams v. State, 546 So. 2d 705, 706 (Ala. Crim. App. 1989) (quoting Biggers v. Tennessee, 390 U.S. 404, 407, 88 S. Ct. 979, 981, 19 L. Ed. 2d 1267, 1269 (1968) (Douglas, J., dissenting) (emphasis in original)). Second, a one-man showup does not give the witness a choice of identifying any other person as being the perpetrator of the crime charged. See Brazell v. State, 369 So. 2d 25 (Ala. Crim. App. 1978), cert. denied, 369 So. 2d 31 (Ala. 1979). Consequently, when a one-man showup is used to

[2]Regardless, as will be discussed, this Court finds no indication that the State's identification procedure violated Watkins's due-process rights. Therefore, even if this Court were to subject Kelley's identification, or lack thereof, to further analysis, Watkins would still not be entitled to any relief.

> identify the perpetrator of a crime, the reliability of the witness's identification is not put to an objective test, such as a live or photographic lineup, in which a single suspect must be chosen from a group of persons possessing similar physical characteristics."

Frazier, 729 So. 2d at 255.

Nonetheless, there is no per se rule requiring the exclusion of evidence derived from a suggestive identification procedure. Manson v. Brathwaite, 432 U.S. 98, 113-14 (1977). In fact, "Alabama case law has consistently recognized that one man show-ups are an important part of efficient police work and generally show how well the police do their job. Conducted as soon as possible after the commission of the crime, they are a reliable, accurate, and constitutionally acceptable identification procedure." Allison v. State, 485 So. 2d 799, 801 (Ala. Crim. App. 1986) (citations omitted).

Alabama uses a two-pronged test to assess the reliability of an identification. First, this Court must determine whether the initial identification procedure was unnecessarily or impermissibly suggestive. Ex parte Appleton, 828 So. 2d 894, 900 (Ala. 2001). If not, then the inquiry ends. If it was, however, this Court must then determine whether

the procedure was so unnecessarily or impermissibly suggestive as to be conducive to irreparable mistaken identification or whether it had such a tendency to give rise to a very substantial likelihood of irreparable misidentification. Id. "It is the likelihood of misidentification which violates a defendant's right to due process." Neil v. Biggers, 409 U.S. 188, 198 (1972).

For the second prong, the Supreme Court of the United States has directed that the likelihood of misidentification be assessed on a case-by-case basis using the factors provided in Biggers. Manson, 432 U.S. at 114. Under Biggers, this Court, considering the totality of the circumstances, must assess the following factors in evaluating the likelihood of misidentification: "[T]he opportunity of the witness to view the criminal at the time of the crime, the witness's degree of attention, the accuracy of the witness's prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." Biggers, 409 U.S. at 199-200.

Returning to the first prong, this Court holds that the identification procedure used by the officers was not unnecessarily or impermissibly

suggestive. Watkins was apprehended shortly after the robbery, and the officers conducted the challenged identification procedure prior to taking Watkins to the police station. Kelley testified that this all occurred "within 30 minutes" of the robbery. (R. 260.)[3]

This Court was confronted with a similar time span between a robbery and a one-man showup in Robinson v. State, 55 Ala. App. 658, 318 So. 2d 354 (1975). This Court first quoted with approval Bates v. United States, 405 F.2d 1104 (D.C. Cir. 1968), which explained why a promptly held one-man showup is constitutionally permissible:

> "In Bates v. United States, 132 U.S. App. D.C. 36, 405 F.2d 1104, Judge Burger, now Chief Justice of the Supreme Court of the United States, writing for the court said:
>
> > " 'There is no prohibition against a viewing of the suspect alone in what is called a "one-man showup" when this occurs near the time of the alleged criminal act; such a course does not tend to bring about misidentification but rather tends under some circumstances to insure accuracy.'

[3]The exact amount of time between the robbery and the identification is not clear. The parties disputed the reliability of the time stamps on the recordings captured by the officers' body cameras. Watkins asserts in his brief that the identification procedures were conducted an hour after the robbery.

> "In Bates, Judge Burger further wrote:
>
> > " 'Our review of the circumstances surrounding the apprehension of Appellant and the police conduct which led to his identification satisfies us that the claim that Appellant was denied due process of law is without merit; there was no "substantial likelihood of irreparable misidentification." To the contrary, the police action in returning the suspect to the vicinity of the crime for immediate identification in circumstances such as these fosters the desirable objectives of fresh, accurate identification which in some instances may lead to the immediate release of an innocent suspect and at the same time enable the police to resume the search for the fleeing culprit while the trail is fresh.' "

Robinson, 55 Ala. App. at 662, 318 So. 2d at 358 (quoting Bates, 405 F.2d at 1106). After the Robinson court noted that the time span in the case before it was less than 30 minutes, the court then quoted the Court of Appeals for the Second Circuit addressing a similar span:

> " 'The confrontation in this case was a reasonable one. When the two suspects were brought to Mrs. Camardella's house, only 30 minutes had elapsed since she reported the crime. It must have been obvious to the witness that the suspects were apprehended solely on the basis of the descriptions given by her to the police. Thus this prompt confrontation was desirable because it

> served to insure "the immediate release of an innocent suspect and at the same time (to) enable the police to resume the search for the fleeing culprit while the trail is fresh." Bates v. United States, 132 U.S. App. D.C. 36, 405 F.2d 1104, 1106 (1968). We view the instant situation as one in which prudent police work necessitated the on-the-spot identification in order to resolve any possible doubts the police may have had when they first took the petitioner into custody.' "

Id. (quoting United States ex rel. Cummings v. Zelker, 455 F.2d 714, 716 (2d Cir. 1972)).

Thus, although a one-man showup may be suggestive, it is not impermissibly suggestive where, as here, the identification procedure is conducted promptly after the offense. "The standard, after all, is that of fairness as required by the Due Process Clause of the Fourteenth Amendment." Manson, 432 U.S. at 113. And this Court should not be misunderstood as placing a particular limit on the amount of time that may elapse between an offense and an identification procedure before that procedure is per se impermissibly suggestive. Promptness must be evaluated on a case-by-case basis. For instance, in Carter v. State, 340 So. 2d 94 (Ala. Crim. App. 1976), this Court addressed the propriety of a one-man showup that was conducted some two-and-a-half hours after a

robbery. This Court declined to focus solely on the time that had elapsed between the robbery and the identification:

> "In the instant case, when defendant was apprehended and the officers were confronted with his claim that he himself had been robbed, that he was not guilty of any robbery, they were faced with a dilemma. They had probable cause for apprehending him and taking him to jail on the basis of the description given to them by the victim, but his statement that he himself had been robbed, his denial of any robbery by himself, and some blood on his face that indicated some violence to him, were calculated to give the officers pause. They would not have been justified in releasing him at that time; they were clearly justified in rechecking at that time with the victim of the robbery. There was nothing improper about their conduct. There was nothing unnecessarily suggestive in their taking him to the victim and asking her if she recognized him. They were performing their duty to all concerned, the public, the victim and the defendant. This cannot be said of any other course that they could have taken at that time, including particularly the suggested course that they should have locked him up and thereafter, around midnight perhaps, or the next morning, conducted a lineup. The procedure followed by them was neither impermissibly suggestive nor conducive to a likelihood of misidentification."

Carter, 340 So. 2d at 98-99. Like the defendant in Carter, Watkins repeatedly professed his innocence, stating that he was fleeing from the officers only because of an outstanding warrant for his arrest. The officers' promptly presenting Watkins to Bass for an identification served

"all concerned, the public, the victim and the defendant." Carter, 340 So. 2d at 98.

Under the circumstances presented here, this Court holds that the identification procedure used by the officers was not impermissibly suggestive but, rather, was consistent with sound police work. In light of this holding, further analysis under the second prong is unnecessary. Nonetheless, this Court notes that further analysis of the Biggers factors would yield Watkins no relief. Although the interaction was brief, Bass saw and even spoke to Watkins in a well lit office. Bass was in close proximity to Watkins and, significantly, the interaction between Watkins and Bass occurred before Bass realized a robbery was taking place, i.e., Bass's perception was not burdened by the stress of a robbery. The record does not contain a description of Watkins given by Bass around the time of the robbery, although Bass's recollection of Watkins's appearance, given during his testimony, was consistent with Watkins's general physical characteristics as well as the items found in the trash can at the neighboring La Quinta Inn. Finally, during the one-man showup, Bass told officers he was "110 percent sure" of his identification of Watkins.

There was no "likelihood of misidentification" under the facts here. See Biggers, 409 U.S. at 198. Because reliability is the linchpin in determining the admissibility of identification testimony, there was no basis on which to suppress Bass's identification. See Manson, 432 U.S. at 114. Accordingly, the circuit court did not err in denying Watkins's motion to suppress evidence related to his pretrial identification.

II.

Watkins also asserts that his right to be free from double jeopardy was violated when he was convicted of two separate counts of robbery against one victim. Watkins was indicted and convicted of one count of first-degree robbery for, while armed with a knife, using the threat of force against Kelley to steal money belonging to Kelley, and one count of first-degree robbery for, while armed with a knife, using the threat of force against Kelley to steal money belonging to Value Place Inn. The State concedes the issue and asks this Court to remand the case so that one of Watkins's convictions can be vacated.

> "The constitutional guarantee against double jeopardy protects a defendant from being subjected to multiple punishments for the same offense. This guarantee bars the

> conviction of a defendant for two separate counts of first-degree robbery where the evidence adduced at trial tended to show that the defendant committed only one act of robbery against one victim. Moore v. State, 709 So. 2d 1324 (Ala. Crim. App. 1997)."

Young v. State, 724 So. 2d 69, 73 (Ala. Crim. App. 1998).

The parties properly rely on this Court's prior holding in Craig v. State, 893 So. 2d 1250 (Ala. Crim. App. 2004):

> "'"Robbery is an offense against the person ...."' Ex parte Windsor, 683 So. 2d 1042, 1046 (Ala. 1996) (quoting Windsor v. State, 683 So. 2d 1027, 1032 (Ala. Crim. App. 1994)). That is, the victim in this case was [Kelley], not the [Value Place Inn], although some of the property taken belonged to the business. Proof of an actual taking of property is not required to sustain a conviction for robbery. See Cook v. State, 582 So. 2d 592 (Ala. Crim. App. 1991). Thus it is the use of force, or the threat of the use of force, against the person that constitutes the crime; therefore, the unit of prosecution is the act of violence against the person. Thus, the number of charges against the defendant is not determined by the number of pieces of property actually taken, as was done in this case. Cf. Connolly v. State, 539 So. 2d 436, 441-42 (Ala. Crim. App. 1988) ('The State could not convert a single theft of various items of property into separate offenses by alleging the theft of different items in separate indictments. All the property was taken during the same transaction and constituted one offense. Such is not permitted.')."

Craig, 893 So. 2d at 1255-56 (footnote omitted). Watkins stole property belonging to Kelley and the Value Place Inn in one continuous act of

robbery against Kelley. Thus, his two convictions for first-degree robbery violated Watkins's right to be free from double jeopardy, and one of his convictions must be reversed.

For the reasons stated herein, this Court affirms one of Watkins's convictions and sentences for first-degree robbery, and we remand the case to the circuit court with instructions to vacate one of Watkins's convictions and sentences for first-degree robbery. The circuit court should file with this Court its order vacating one of Watkins's convictions and sentences, as instructed above, within 28 days of the date of this opinion.

AFFIRMED IN PART; REMANDED WITH INSTRUCTIONS.

Kellum, McCool, Cole, and Minor, JJ., concur.