STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

STATE OF WEST VIRGINIA,
Plaintiff below, Appellee

v.) No. 35685 (Marion County No. 06-F-74)

SALADINE QUINN RICHARDSON,
Defendant below, Appellant

FILED
April 4, 2011
released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This case is before the Court upon the appeal of Saladine Richardson from the October 29, 2009, Order of the Circuit Court of Marion County, West Virginia, sentencing the Appellant, Saladine Richardson, to an indeterminate sentence of two to ten years following a jury conviction of one count of malicious assault pursuant to West Virginia Code § 61-2-9(a) (2010). Pursuant to Rule 1(d) of the West Virginia Revised Rules of Appellate Procedure, the Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having carefully reviewed the record, the briefs of the parties, the arguments of counsel, the applicable precedent, and the relevant standard of review, the Court concludes that the trial court committed no error regarding the admissibility of the relevant photo array, which is the only alleged error accepted by the Court for review. The Court further finds that this case presents no new or significant questions of law. Thus, the Court disposes of the case through a memorandum decision as contemplated under Rule 21 of the West Virginia Revised Rules of Appellate Procedure.

Either during the late evening of March 6 , 2006, or during the early morning of March 7, 2006, the Appellant shot Houston Lee, who was sixty-four years old, in the face, at point blank range. Mr. Lee lost the use of his left eye as result of the gunshot. The shooting occurred in the driveway at the home of Carol Davison, which was located in Fairmont, West Virginia. Mr. Lee gave a brief statement at the hospital in which he told the officer that he was standing at arm's length from his assailant at the time he was shot. Mr. Lee described his assailant as a black male with dreadlocks, who was in his early twenties with a medium build and he was wearing a red coat. Mr. Lee also described the vehicle that his assailant used to leave the scene as a green Jeep.

At the hospital, between a day to a day and a half after the shooting, Mr. Lee first was shown a photo array which included a photograph of a suspect in the crime, Jason

Jones. Mr. Lee knew Mr. Jones and vehemently denied that he was the shooter. Mr. Lee did not identify the shooter in the first photo array. After the Appellant was found by the police, the police took the Appellant's photograph and showed the photograph to Mr. Lee in a second photo array that is the subject of the instant appeal. The police officer testified that Mr. Lee's identification "wasn't immediately, because his glasses - he didn't have his glasses." The officer stated that he studied the array, however, and "was sure that Mr. Richardson was the person . . . [who] had shot him."

Mr. Lee also testified at trial. He stated that he was standing in the driveway at Carol Davison's home when he saw the Appellant leaving her home. He had never met the Appellant. Mr. Lee stated that the Appellant was standing approximately two feet away from him when the Appellant shot him in the face. Mr. Lee was adamant that he got a good look at the Appellant, and that he "would never forget that face." Mr. Lee identified the Appellant in court without any hesitation.

Carol Davison also was a witness to the shooting and gave a description of the perpetrator to the police. At the time of the shooting, she described the assailant as a light-skinned black male with tightly braided hair and a silky red jacket. She initially stated that she did not know the perpetrator, but she saw him strike Mr. Lee, shoot him in the face, and then drive off in a green jeep or SUV.

Ms. Davison was subject to further questioning by the police after they interviewed Mr. Lee. During this questioning, Ms. Davison admitted to the police that she had not been completely truthful with them due to her concern for her safety and that of her children. She then told the police that the shooter's name was Woo and that he hung out with his friends in Carolina, located in Marion County, West Virginia. She described the assailant as black, probably brown complected, with medium dreadlocks, and wearing a red jacket. The assailant had been a friend of one of Ms. Davison's daughter's, Aston Davison. Ms. Davison had asked Aston to clear her friends out of her house. Ms. Davison told Mr. Lee that she had asked people to leave her home and had asked Mr. Lee to help her extricate Ashton's friends, which included the Appellant. Shortly thereafter, the assailant had shot Mr. Lee.

Carol Davison identified the Appellant from the photo array. The police officer testified at the suppression hearing that Ms. Davison's identification of the Appellant

took a "few seconds . . . [m]aybe three seconds." Ms. Davison also identified the Appellant in court.[1]

Additionally, Eva Gowers testified at trial that on March 6, she called the Appellant's cousin, Darrell Claybrook. The Appellant answered and asked Ms. Gowers for a ride to Ashton Davison's home. Ms. Gowers testified that she had met the Appellant in January of 2006 and saw him occasionally. She further testified that he lived in Carolina, West Virginia, and went by the street name Woo. She testified that the Appellant wore his dreadlocks in a ponytail. Ms. Gowers stated that on the evening of the shooting, she picked the Appellant up in her hunter green SUV and dropped him off at the Davison home. She left and later returned and parked down the street from the residence. She later heard a gunshot and a woman screaming. She then witnessed the Appellant kiss Ashton Davison. The Appellant was wearing a red jacket and red hoodie at the time. The Appellant returned to her car and ordered Ms. Gowers to "Go." The Appellant then stated to her, "I don't know if I got him." Ms. Gowers also identified the Appellant from the same photo array shown to Mr. Lee and Ashton Davison.

The Appellant's motion to suppress sought suppression of the photo array because all the men, while African American, had hairstyles that were different from the Appellant's and, therefore, "[n]one of the individuals in the 'photo array' array resemble the defendant[]" causing the array to be impermissibly suggestive. The Appellant further argued that his photo was "brighter" and stood out more than the other photographs used. The Appellant also pointed out that his photo is the only one in the array with the profile picture on the left and the facing forward picture on the right. Finally, the Appellant argued that his photograph was the only one with an identification board in the picture.[2] After a suppression hearing, the circuit court denied the Appellant's motion, determining that "there is no evidence to suggest that the identification made by the witnesses was somehow tainted by the police."

---

[1]Ashton Davison also was shown the photo array and picked the Appellant out as the shooter. Her identification of the Appellant was described by the officer during the suppression hearing as "immediate and very certain." Ashton had left the State by the time of trial and did not testify during trial.

[2]The only portion of the identification board that was visible was the top part of the letters "ID NO" and "DATE." There was no reference on the identification board to a police department, nor was there any reference to the Appellant having a police record. Moreover, the photo array shown to Carol Davison did not contain any portion of the identification board.

The sole issue before the Court is whether the circuit court abused its discretion in admitting the photo array containing the Appellant's photograph at trial.[3] The Appellant argues that the circuit court erred in allowing the State's witnesses to testify about identifying the Appellant and in allowing those same witnesses to make in-court identifications because the photo array violated this Court's decision in *State v. Casdorph*, 159 W. Va. 909, 230 S.E.2d 476 (1976), *vacated on other grounds as stated in State v. Persinger*, 169 W. Va. 121, 286 S.E.2d 261 (1982), as it was impermissibly suggestive.

The Court has previously held that "'(r)ulings on the admissibility of evidence are largely within a trial court's sound discretion and should not be disturbed unless there has been an abuse of discretion.' *State v. Louk*, 171 W. Va. 639, 643, 301 S.E.2d 596, 599 (1983)." Syl. Pt. 2, *State v. Peyatt*, 173 W. Va. 317, 315 S.E.2d 574 (1983); *accord* Syl. Pt. 1, *State v. Pettrey*, 209 W. Va. 449, 549 S.E.2d 323 (2001), *cert. denied*, 534 U.S. 1142 (2002). Additionally, the Court held in syllabus point one of *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996), that

> [w]hen reviewing a ruling on a motion to suppress, an appellate court should construe all facts in the light most favorable to the State, as it was the prevailing party below. Because of the highly fact-specific nature of a motion to suppress, particular deference is given to the findings of the circuit court because it had the opportunity to observe the witnesses and to hear testimony on the issues. Therefore, the circuit court's factual findings are reviewed for clear error.

Id. at 107, 468 S.E.2d at 722, Syl. Pt. 1.

In *Casdorph*, the Court held that

---

[3]The Appellant also argues that the State did not produce any of the witnesses who identified the Appellant from the photo array to testify at the suppression hearing. A review of the record, however, reveals that in the Appellant's petition for appeal, the Appellant does not assign any error regarding the State's witnesses not being at the suppression hearing to testify about the photo array at issue herein. Similarly, the Appellant failed to object to the police officers' testimony about what the witnesses stated regarding the photo arrays during the suppression hearing.

> [i]n determining whether an out-of-court identification of a defendant is so tainted as to require suppression of an in-court identification a court must look to the totality of the circumstances and determine whether the identification was reliable, even though the confrontation procedure was suggestive, with due regard given to such factors as the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' 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.

159 W. Va. at 909, 230 S.E.2d at 478, Syl. Pt. 3.

In this case, the Court finds no error regarding the admissibility of the photo array. All of the witnesses had the opportunity to view the Appellant at the time of the crime. Two of the witnesses, Eva Gower and Carol Davison, knew the Appellant personally and had seen him prior to the shooting. They all testified regarding their respective degree of attention to the Appellant and all the witnesses, who also testified at trial, gave similar descriptions of the Appellant. Each of the witnesses were very certain in their respective identifications and there was very little length of time that lapsed between the crime and the confrontation.

Further, there was no evidence of any of the witnesses cross-contaminating each other's identification as the police officers testified that each identification was done without any other witness being present. The officers further testified that they did not prompt the witnesses, that each witness was given adequate time to examine the photo arrays and that each witness was told that the suspect may or may not be in the array.

For the foregoing reasons, we find no error in the circuit court's decision and the conviction is hereby affirmed.

Affirmed.

ISSUED: April 4, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum

Justice Thomas E. McHugh