

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,	)	No. ED98978
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Timothy J. Wilson
DARION JORDAN IVY,	)	
	)	
Appellant.	)	FILED: February 25, 2014

Appellant Darion Ivy (“Ivy”) appeals from the judgment of the trial court following his conviction by a jury of one count of first-degree robbery, Section 569.020, RSMo. 2000. Ivy was sentenced to 12 years in the Missouri Department of Corrections. On appeal, Ivy argues that the trial court plainly erred in denying his request for a mistrial when the State failed to disclose to the defense a statement that Ivy made to a police recruit. In his second point on appeal, Ivy asserts that the trial court clearly erred in denying his motion to suppress identification and abused its discretion in overruling his objections at trial to testimony by Dean Morgan (“Morgan”) regarding his in-court and out-of-court identifications of Ivy.

AFFIRMED.

Division III holds: The State violated Rule 25.03(A)(2) by not disclosing Ivy’s statement prior to trial. However, the State’s failure to disclose did not result in fundamental unfairness because an earlier disclosure of the requested evidence would not have affected the result of the trial given the overwhelming evidence of Ivy’s guilt. Therefore, no manifest injustice or miscarriage of justice occurred, and the trial court did not plainly err in denying Ivy’s request for a mistrial. Furthermore, no unduly suggestive pre-trial identification procedure occurred that could have tainted Morgan’s identification of Ivy. As a result, Morgan’s in-court and out-of-court identifications of Ivy were admissible at trial. The trial court also did not clearly err in denying Ivy’s motion to suppress identification or abuse its discretion in allowing Morgan to testify regarding his in-court and out-of-court identifications of Ivy.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

Attorney for Appellant: Lisa Stroup

Attorney for Respondent: Chris Koster and Dora Fichter

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