

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI, RESPONDENT,

v.

JOHNNY L. ALLEN, APPELLANT.

DOCKET NUMBER WD69012

DATE: December 2, 2008

Appeal From:

COOPER COUNTY CIRCUIT COURT

THE HONORABLE HUGH CRAIG HARVEY, JUDGE

Appellate Judges:

Division Two: Joseph P. Dandurand, P.J., Harold L. Lowenstein and James M. Smart, JJ.

Attorneys:

Melinda Kay Pendergraph, Esq., Columbia, MO, **for appellant.**

Shaun J. Mackelprang, Esq. and Evan Buchheim, Esq., Jefferson City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS – WESTERN DISTRICT

STATE OF MISSOURI,

RESPONDENT,

V.

JOHNNY L. ALLEN,

APPELLANT.

WD69012

Cooper County

Before Division Two Judges: Joseph P. Dandurand, P.J., Harold L. Lowenstein and James M. Smart, JJ.

Johnny L. Allen appeals his conviction following a jury trial for robbery in the first degree, and sentence of fifteen years imprisonment. He presents seven points on appeal, claiming the trial court erred in (1) admitting as evidence bib coveralls, which he claims were illegally seized; (2) admitting evidence of drugs and drug paraphernalia, which he claims was inadmissible evidence of other crimes; (3) admitting eyewitness identification evidence; (4) excluding expert witness testimony; (5) excluding as evidence the Department of Justice Guidelines on Eyewitness Evidence (“research report”); (6) refusing his tendered jury instruction on eyewitness testimony; and (7) allowing over his objection two victim eyewitnesses to be present in the courtroom during a pre-trial hearing on motions to suppress evidence.

REVERSED AND REMANDED.

Division Two holds:

The trial court did not abuse its discretion in overruling Allen’s motion to suppress evidence of clothing that was seized pursuant to the “plain view” doctrine.

The trial court erred in permitting evidence of drugs and drug paraphernalia; the error was prejudicial. The evidence was inadmissible evidence of other crimes. The State presented no evidence to establish the exception allowing admission of evidence of other crimes to show motive for commission of the crime charged. Point II is granted, the judgment of the trial court is reversed, and the case is remanded for a new trial.

The trial court did not err in admitting eyewitness identification as the record shows that the police procedures used to obtain the identifications were not unduly suggestive. Further, it was within the trial court’s discretion to exclude the testimony of Allen’s proffered expert on eyewitness identification.

The trial court did not abuse its discretion in excluding the research report because Allen failed to meet the foundational requirements for the document to be admitted.

The trial court did not err by refusing to give an additional jury instruction on witness credibility beyond the general credibility instruction of Missouri Approved Instruction 302.01.

The trial court properly allowed the two victim-witnesses to be present in the courtroom at all pre-trial hearings pursuant to the crime victims' rights established under Missouri law.

Opinion by: Joseph P. Dandurand, Judge

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