

IN THE COURT OF APPEALS OF IOWA

No. 9-838 / 08-1843
Filed November 12, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARIO A. McCULLUM,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

Mario McCullum appeals following conviction and sentence for robbery in the first degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglas, Assistant Attorney General, Ralph Potter, County Attorney, and Brigit Barnes, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

DANILSON, J.

Mario McCullum appeals following conviction and sentence for robbery in the first degree, arguing the district court erred in denying his motion to suppress the clothing lineup because the identification was unduly suggestive and violated his due process rights. In denying McCullum's motion, the district court relied on *State v. Bruns*, 304 N.W.2d 217, 219 (Iowa 1981) (declining "to extend cases protecting the accused's right to a fair pretrial identification of her person to the pretrial identification of items of physical evidence"), and determined that due process protections for pretrial identification do not extend to identification of inanimate objects.

McCullum argues that *Bruns* is distinguishable from the instant case, because the victim in *Bruns* was asked to identify the accused's car, whereas the victims in the instant case were asked to identify the clothing worn by McCullum. McCullum contends this court should reverse *Bruns* or distinguish these facts from *Bruns*, and find that due process applies to pretrial identification of an accused's clothing alleged to have been worn during the offense. Upon our review, we conclude the longstanding rule in *Bruns* applies to pretrial identification of physical evidence, including clothing. *See id.* We decline to reverse that holding and find no distinguishable facts. Therefore, we affirm.

AFFIRMED.