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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2017AP1894-CR

Circuit Court Case No. 2017CF76

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

STEPHAN I. ROBERSON,

Defendant-Respondent.

APPEAL FROM THE ORDER GRANTING A MOTION SUPPRESS EVIDENCE, ENTERED IN WOOD COUNTY CIRCUIT COURT, HON. NICHOLAS J. BRAZEAU, PRESIDING.

DEFENDANT-RESPONDENT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ISSUES PRESENTED

I. **WHETHER THE TRIAL COURT'S DECISION TO SUPPRESS THE ALLEGED VICTIM'S OUT-OF-COURT IDENTIFICATION WAS CLEARLY ERRONEOUS WHERE POLICE USED A SINGLE PHOTOGRAPH OF ROBERSON IN THE SHOWUP.**

II. **WHETHER THE TRIAL COURT'S DECISION TO SUPPRESS THE ALLEGED VICTIM'S IN-COURT IDENTIFICATION WAS CLEARLY ERRONEOUS.**

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Defendant-Respondent, Stephan I. Roberson, does not request oral argument as the briefs will adequately present the case. Publication is not requested.

STATEMENT OF THE CASE

The State appeals the partial granting of Roberson's Motion to Suppress Identification, and to Compel Disclosure of Confidential Informants. (R.17.) After a hearing where the alleged victim and two investigating officers testified, the parties submitted written briefs in support of their positions. (R.35, R.25, R.26.) The Circuit Court ordered the suppression of the alleged victim's out of court and in court identifications, denied the motion to suppress identification by Sergeant Studzinski. The motion to compel disclosure of confidential informants is not a subject in this appeal. (R.28.)

During the motion hearing, the alleged victim (hereinafter, "CAS,") testified he had met with a black male know to him as "P," three times for marijuana transactions. The first time CAS met P

was in a Walmart parking lot where P approached CAS to ask if he could provide him with marijuana. (R.35, p.10, A-App. 116.) CAS describe P as wearing a sweatshirt with work pants and "dreadlocks or corn rows." CAS helped P purchase marijuana and that the transaction took approximately a half hour. (R.35, pp. 11, 20, A-App. 117, 126.)

The next day, the two had telephone contact. The day after that, CAS texted P and told him he could get more marijuana for him. P picked up CAS, along with his brother and sister and the four drove together to get the marijuana. Again, CAS described P as wearing a sweatshirt with work pants and "dreadlocks or corn rows." P brought the three back home where P asked CAS to sell some of marijuana he had just purchased. This second transaction took approximately a half hour. (R.35, p.20, A-App. 126.)

CAS said he went to sell a half ounce of the marijuana, but the buyer robbed him at gunpoint. After CAS texted P that he had been robbed, P picked up CAS who was walking down a road. (R.35, pp. 12-13, A-App. 118-119.)

CAS testified that P drove to a park then fired a shot from a small handgun over his head. CAS said the two got into a physical altercation and while he was hitting P, he was shot in the leg. (R.35, p. 14, A-App. 120.) P then drove CAS to a house in Wisconsin Rapids where CAS tied two belts around his leg and got high. (R.35, p. 15, A-App. 121.) CAS estimated this meeting lasted an hour and a half to two hours and began twenty minutes to a half hour after he was robbed at gunpoint by the potential buyer. (R.35, p. 20, A-App. 126.)

About two and a half weeks later, while he was in jail on a probation hold, CAS spoke with Investigator Reblin and his partner Detective Richter. After explaining the events leading up to being shot by P, including P buying him a phone on the first day they met and arranging drug

transactions, Reblin asked CAS if he would recognize P if he saw him again. CAS replied, "possibly… black people kind of look…" and made a hand gesture that Reblin did not fully understand. (R.35, p. 30, A-App. 136.) CAS is white male and Roberson is black male. (R.35, pp. 9, 30, A-App. 115, 136.)

Detective Richter showed CAS Roberson's Facebook profile photograph on his cell phone. (R.19, R.35, p. 27, A-App. 133.) CAS said the photo was of the person who shot him. (R.35, p. 28, A-App. 134.)

Reblin testified he did not think a photo array was necessary, because he had other means of identifying the shooter as Roberson.

> A. It was a person that was known to [CAS] and who had had more than just a -- a one-time interaction with him. Um, typically in situations such as that if the person knows who it was but they reference that person by a nickname, um, but I've got a proper identification, name, date of birth, and photograph, then I'll ask them if that's the same person they know as the person that they're referring. (R.35, pp. 28-29, A-App. 134-35.)

Reblin also testified that when he showed the photo to CAS he was fairly certain Roberson was P and the person who shot CAS. (R.35, p. 30, A-App.135.)

> Q. So when you showed [CAS] the photograph of Mr. Roberson, were you aware that [CAS] had only seen Mr. Roberson about three times?
>
> A. I believe so.
>
> Q. And you didn't -- you didn't do a lineup procedure with Mr. Roberson of people who look vaguely similar to Mr. Roberson?
>
> A. I did not.
>
> Q. And you didn't show Mr. Roberson – [CAS] a mug book?
>
> A. I did not.
>
> Q. You did not do a photo array?

> Q. You didn't ask [CAS] for a detailed description of P's features that you could compare against the photograph of Mr. Roberson?
>
> A. I did not. (R.35, p. 30-31, A-App. 136-37.)

During direct examination CAS said he knew what his shooter looked like before Reblin showed him the photo. CAS was asked if the shooter was in the courtroom and to identify the person. CAS replied, "[h]e's over there in orange," and gestured at Roberson. (R.35, p. 16, A-App. 122.)

The circuit court's decision to suppress the identifications included an analysis of whether Reblin's identification procedure was unnecessarily suggestive and conducive to mistaken identity using the factors delineated in *Neil v. Biggers,* 409 U.S. 188 (1972). The court also examined the issue of single photo identification using *Kain v. State,* 48 Wis. 2d 212 (1970). In addition, the court recognized the issue cross-racial/cultural identification as being a factor in its decision.

> The question for the Court, finally, is, did Reblin's proffering of a single photo of the defendant to [CAS] while telling [CAS]that this was the person they thought shot him unnecessarily suggest an identity and is conducive to mistaken identification? This Court finds that it was. Even with the understanding that Reblin had tracked down that photograph using "P"'s phone number, [CAS] is clearly unsure of the characteristics of African Americans. He states the same. Objectively, it is hard to convince ones self that [CAS] wouldn't have identified any picture of an African American male as "P" if Reblin indicated that it was a picture of "P". The process is shaky, and the victim making the identification is likewise shaky, so the Court lacks confidence that the identification of "P" by [CAS] is not a result of showing the single photo to him. As such, [CAS's] identification of the defendant's photo and his later identification in court, tainted by his exposure to that photo, are suppressed. (R.28, p.4., A-App. 104.)

ARGUMENT

III. WHETHER THE TRIAL COURT'S DECISION TO SUPPRESS THE ALLEGED VICTIM'S OUT-OF-COURT IDENTIFICATION WAS CLEARLY ERRONEOUS WHERE POLICE USED A SINGLE PHOTOGRAPH OF ROBERSON IN THE SHOWUP.

1. Review of Suppression Motions.

Appellate review of a motion to suppress, employs a two-step analysis. *State v. Eason,* 2001 WI 98, ¶ 9, 245 Wis. 2d 206, 222. The first step is to review the circuit court's findings of fact which will upheld, unless they are against the great weight and clear preponderance of the evidence. *State v. Martwick,* 2000 WI 5, ¶ 18, 231 Wis. 2d 801. "In reviewing an order suppressing evidence, appellate courts will uphold findings of evidentiary or historical fact unless they are clearly erroneous." *State v. Kieffer,* 217 Wis. 2d 531, 541 (1998); *see also State v. Harris,* 206 Wis. 2d 243, 249-50 (1996). The second step is an independent review of the application of relevant constitutional principles to those facts. *State v. Vorburger,* 2002 WI 105, ¶ 32, 255 Wis. 2d 537. Since the second step involves a question of law, the appellate court conducts a de novo review, but with the benefit of analyses of the circuit court and court of appeals, of applicable. *See Kieffer,* 217 Wis. 2d at 541.

A finding of fact is clearly erroneous if it is against the great weight and clear preponderance of the evidence. *State v. Arias,* 2008 WI 84, ¶ 12, 311 Wis. 2d 358, (*quoting State v. Sykes,* 2005 WI 48, ¶ 21 n. 7, 279 Wis. 2d 742).

2. Analyzing Showup Identifications.

This case involves a showup identification. "A 'showup' is an out-of-court pretrial identification procedure in which a suspect is presented singly to

a witness for identification purposes." *State v. Wolverton,* 193 Wis. 2d 234, 263 n. 21, (1995) (citing *Stovall v. Denno,* 388 U.S. 293, 302, 87 S.Ct. 1967 (1967)). Since the mid 1960s, the right of due process in out-of-court identification has been addressed in several United States Supreme Court decisions. In *Stovall*, an African-American male, was arrested for murder and taken to the hospital room of the only surviving witness to the alleged crime who was awaiting surgery for stab wounds. The defendant, the only African-American in the room, was handcuffed to one of five police officers who, along with two prosecutors, brought him into the hospital room. The witness identified the defendant from her hospital bed after a police officer asked her if he "was the man," and the defendant uttered a few words for the purpose of voice identification. After she recovered, she testified at the defendant's trial as to the hospital room identification and then also made an in-court identification of the defendant. *Stovall,* 388 U.S. at 295.

The U.S. Supreme Court concluded that due process was a recognized ground of attack under such circumstances, as "[t]he practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned." *Id.* 388 U.S. at 302 (footnote omitted). Still, the Court held that the existence of a due process violation depends on the totality of the circumstances surrounding it, with a key factor being necessity. *Id.*

Given the witness could not visit the jail or courthouse in her condition, the prognosis of witness was uncertain, police had a responsibility to identify the attacker, and the need for immediate confrontation in the hospital was imperative. *Id.,* 388 U.S. at 302. Thus although the identification was suggestive, the U.S. Supreme Court determined that it did not violate the defendant's

right to due process because the procedure was necessary. *Id.*

Later, the U.S. Supreme Court reviewed other cases, considering the scope of due process protection against the admission of evidence derived from suggestive identification procedures, namely, *Simmons v. United States,* 390 U.S. 377, 88 S.Ct. 967 (1968); *Foster v. California,* 394 U.S. 440, 89 S.Ct. 1127 (1969); and *Coleman v. Alabama,* 399 U.S. 1, 90 S.Ct. 1999 (1970). From these cases general guidelines developed "as to the relationship between suggestiveness and misidentification." *Simmons,* 390 U.S. at 384.

The Court held that each case must be considered on its own facts, and that convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Simmons v. United States,* 390 U.S. 377, 88 S.Ct. 967 (1968).

In 1972, the U.S. Supreme Court decided another case which concerned the station-house identification of the defendant by the alleged victim of sexual assault. In *Neil v. Biggers,* 409 U.S. 188, 93 S.Ct. 375 (1972), a woman reported she was assaulted in her kitchen at night by a youth with a butcher knife. After several lineups and showups over seven months, until she was called to the police station to view Biggers who was being held on other charges. When police were unable to locate suitable subjects for a lineup, they chose to walk the defendant past the victim and directed him to say "shut up or I'll kill you." The victim then identified Biggers as the man who assaulted her. *Id.,* at 195.

In *Biggers,* the U.S. Supreme Court opined that *suggestive confrontations are disapproved*

because they increased the likelihood of misidentification, and *unnecessarily suggestive ones are condemned* for the further reason that the increased chance of misidentification is gratuitous. Id., at 198 (emphasis added). However, the Court also held the "admission of evidence of a showup without more does not violate due process." *Id.* The Court then considered the following factors in evaluating the likelihood of misidentification:

> [1] The opportunity of the witness to view the criminal at the time of the crime,
>
> [2] the witness' degree of attention,
>
> [3] the accuracy of the witness' prior description of the criminal,
>
> [4] the level of certainty demonstrated at the confrontation, and
>
> [5] the time between the crime and the confrontation. (*Biggers,* 409 U.S. at 200.)

Ultimately, the U.S. Supreme Court found the District Court's conclusion that the station-house identification was so suggestive that it violated due process, was clearly erroneous. Using the delineated factors, the Court found: 1) the victim spent up to half an hour with her assailant; "a considerable period of time," 2) she was with him under adequate artificial light in her house and under a full moon outdoors, 3) she faced him directly and intimately at least twice, 4) she was no casual observer, but rather the victim of one of the most personally humiliating of all crimes, 5) her description to the police, which included the assailant's approximate age, height, weight, complexion, skin texture, build, and voice was more than ordinarily thorough, and 6) she had "no doubt" that Biggers was the person who assaulted her. *Id.,* at 201.

In 1995, the Wisconsin Supreme Court decided *Wolverton,* adopting the test set forth in *Biggers* in an attempt to minimize the misidentification of defendants in Wisconsin. *See State v. Wolverton,* 193 Wis. 2d 234 (1995); *Fells v.*

State, 65 Wis. 2d 525 (1974) The Court upheld the admissibility of the out-of-court identifications by multiple witnesses who had observed Wolverton on multiple occasions before he was shown sitting in the back seat of a squad car. However, the Court did not find the identifications admissible under standards involving due process and necessity as set forth in *Stovall,* but because under the totality of the circumstances, such identifications were determined to be reliable. *Wolverton,* 193 Wis. 2d at 268.

Ten years after *Wolverton*, the Wisconsin Supreme Court reexamined their position that evidence from an impermissibly suggestive out-of-court identification can still be used at trial if, based on the totality of the circumstances, the identification was reliable. In *State v. Dubose,* 2005 WI 26, 285 Wis. 2d. 143, the Court recognized there had been extensive studies on the issue of identification evidence, research that they found impossible to ignore. *Id.*, at ¶ 29 (internal citations omitted). They concluded, "[t]he research strongly supports the conclusion that eyewitness misidentification is now the single greatest source of wrongful convictions in the United States, and responsible for more wrongful convictions than all other causes combined." *Id.* at ¶ 30 (internal citations omitted).

> In light of such evidence, we recognize that our current approach to eyewitness identification has significant flaws. After the Supreme Court's decisions in *Biggers* and *Brathwaite*, the test for showups evolved from an inquiry into unnecessary suggestiveness to an inquiry of impermissible suggestiveness, while forgiving impermissible suggestiveness if the identification could be said to be reliable. Studies have now shown that approach is unsound, since it is extremely difficult, if not impossible, for courts to distinguish between identifications that were reliable and identifications that were unreliable. "Considering the complexity of the human mind and the subtle effects of suggestive

> procedures upon it, a determination that an identification was unaffected by such procedures must itself be open to serious question." *State v. Leclair,* 118 N.H. 214, 385 A. 2d 831, 833 (1978). Because a witness can be influenced by the suggestive procedure itself, a court cannot know exactly how reliable the identification would have been without the suggestiveness. *Dubose*, 2005 WI 126 at ¶ 31.

The Court in *Dubose*, abrogated *Wolverton* by concluding that evidence obtained from an out-of-court showup is inherently suggestive and inadmissible unless, based on the totality of the circumstances, the procedure was necessary. A showup will not be necessary, however, unless the police lacked probable cause to make an arrest or, as a result of other exigent circumstances, could not have conducted a lineup or photo array. A lineup or photo array is generally fairer than a showup, because it distributes the probability of identification among the number of persons arrayed, thus reducing the risk of a misidentification. *Id.,* at ¶ 33.

Turning to the facts of the case, and knowing that showups are inadmissible as being inherently suggestive, the issue becomes whether the showup was necessary.

Investigator Reblin testified he received information from a confidential informant that CAS had been shot in the leg and where CAS was staying in Wisconsin Rapids. He later received a cell phone from another confidential informant that was logged in to the Facebook account belonging to CAS. Reblin also discovered text messages between CAS and P and also P's phone number. Reblin traced the phone number through Facebook to Roberson's account. With this information, Reblin obtained a search warrant of the residence where CAS was reportedly staying where it was also reported bloodstains were present. When the search warrant was executed, CAS was not present, although there appeared to be bloodstains on some

boxer shorts, a chair, and a quilt. (R.35, p.23-25, A-App. 129-131.) Reblin finally met with CAS in the Wood County Jail where he was being held on a probation hold after receiving treatment for old gunshot wounds. After asking CAS about the circumstances surrounding his gun shot wound he asked if CAS could identify the shooter. Reblin's partner then showed CAS Roberson's Facebook profile photo.(R.35, p.27, A-App. 133.)

Reblin testified he did not think a photo array was necessary.

> Q. Okay. Did you take -- did you think that a photo array was necessary in this case?
>
> A. I did not.
>
> Q. Why not?
>
> A. We had identification through other means than [CAS].(R.35, p.28, A-App.134.)

On cross-examination Reblin agreed that he was fairly certain that Roberson was P and the shooter. (R.35, p29, A-App 135.) Reblin also admitted he did not ask CAS for a detailed description of P's features for comparison to the photo of Roberson.

In the instant case using the *Dubose* approach and looking at the totality of circumstances, the showup was not necessary. Reblin had already connected P to CAS with the cellphone that was logged into CAS' Facebook account. Reblin also connected P's cellphone number to Roberson's Facebook profile. Plus, Reblin alluded to having other means of identification other than what CAS could provide. So Reblin already had probable cause to arrest Roberson, even without conducting the showup, based on whatever "other means of identification" he already had.

Additionally, there were no exigent circumstances justifying the showup. Reblin learned about CAS having a gunshot wound from a confidential informant and despite watching the

residence where CAS was reported to be staying then executing a search warrant, Reblin could not locate CAS. It was not until CAS was arrested on a probation hold, nearly three weeks after the event, before Reblin and his partner went to the jail to interview him.

In its brief, the State asserts that this Court determined the *Dubose* necessity standard is limited to in-person police showups and does not apply to out-of-court identifications based on photographs, citing to *State v. Drew,* 2007 WI App 213, ¶ 19. (Ap.'s Br. p. 12, n.5.)

In *Drew,* the challenge concerned the method of conducting a photo array, arguing that by allowing the witness to use a process of elimination until only Drew's photo remained was "unnecessarily suggestive." *Drew,* at ¶ 15. A reading of the paragraph the State cites to does not hold what the State purports.

> ¶ 19 We recognize that the photo array here, unlike the spontaneous encounter in *Hibl,* is a law enforcement procedure and therefore that distinction between *Hibl* and *Dubose* does not apply here. Nonetheless, we read *Hibl* as emphasizing the limited nature of the actual holding in *Dubose*. While a fair reading of *Hibl* is that the concerns about eyewitness identification discussed in *Dubose* may require a re-examination of standards for other types of identification procedures, we see nothing in Dubose that suggests that should happen for photo arrays in particular, or that suggests how the new *Dubose* standard for showups might apply to photo arrays. We therefore conclude that, until the supreme court indicates otherwise, the correct standard for photo arrays is that articulated in *Powell* and *Mosley*. *Drew,* 2007 WI App 213, ¶ 19. (footnote omitted.)

The standard in *Powell* and *Mosely* is that a criminal defendant bears the initial burden of demonstrating that a *photo array* was impermissibly suggestive and then the burden

shifts to the state to demonstrate that under the totality of the circumstances the identification was reliable. *Powell v. State,* 86 Wis. 2d 51 (1978) and *State v. Mosley*, 102 Wis. 2d 636 (1981). The *Drew* decision does not, contrary to the State's assertion, limit the *Dubose* necessity standard to in-person police showups or render it inapplicable to out-of-court identifications using *a single photograph*.

Even though reliability is not required under *Dubose*, some factors in the instant case are worth noting. First is the problem of cross racial/cultural identification, which CA demonstrated during his interview that he was unsure if he could distinguish between African-American faces. Second, the description of P by CAS was cursory: wearing work pants, a sweatshirt and his hair had dreadlocks or corn rows and made no mention of sunglasses. Yet Roberson's Facebook photo shows him wearing sunglasses, making it more unlikely the identification was reliable. Third, CAS' story has him being threatened at gunpoint by two separate men concerning marijuana within twenty to thirty minutes, a scenario fraught with the potential for misidentification.

The trial court was correct to suppress the out-of-court identification as showing CAS a single photograph on a detective's cell phone as it was inherently suggestive and not necessary under the circumstances. Law enforcement could have easily put together a photo array to show CAS at the jail. No exigent circumstances justified the forgoing of standard methods of identification like photo arrays and line ups.

IV. WHETHER THE TRIAL COURT'S DECISION TO SUPPRESS THE ALLEGED VICTIM'S IN COURT IDENTIFICATION WAS CLEARLY ERRONEOUS.

The admissibility of an in-court identification depends upon whether that identification evidence

has been tainted by illegal activity. In general, evidence must be suppressed as fruit of the poisonous tree, if such evidence is obtained "by exploitation of that illegality." *State v. Roberson,* 2006 WI 80, ¶ 32, 292 Wis. 2d 280, 304; *quoting State v. Knapp,* 2005 WI 127, ¶ 24, 285 Wis. 2d 86 (citation omitted).

The remedy for an illegal warrantless search may be the suppression of any identification evidence that has been tainted. As the United States Supreme Court has concluded, "[t]he exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality." *Roberson,* at ¶ 34, *quoting United States v. Crews,* 445 U.S. 463, 475, 100 S.Ct. 1244 (1980).

An in-court identification is admissible if the court determines that the identification is based on an independent source. *State v. McMorris,* 213 Wis. 2d 156, 166-68 (1997) (citations omitted); *State v. Walker,* 154 Wis. 2d 158, 188 (1990) (*citing Crews,* 445 U.S. 463, 100 S.Ct. 1244,). *See also Powell v. State,* 86 Wis. 2d 51, 65-66 (1978). The primary question is whether "the evidence to which the instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Walker,* 154 Wis. 2d at 186, 453 N.W.2d 127 (*quoting Wong Sun v. United States,* 371 U.S. 471, 488, 83 S.Ct. 407, (1963)). To be admissible, the in-court identification must be made "by means sufficiently distinguishable to be purged of the primary taint." *McMorris,* 213 Wis. 2d at 167 (*quoting United States v. Wade,* 388 U.S. 218, 241, 87 S.Ct. 1926 (1967); *Wong Sun,* 371 U.S. at 488, 83 S.Ct. 407). In other words, the in-court identification must rest on an independent recollection of the witness's initial encounter with the suspect. *Walker,* 154 Wis. 2d at 188.

Once such a constitutionally defective out-of-court identification is established, the in-court identification is admissible if the State carries the burden of showing by clear and convincing evidence that the in-court identification was not based tainted by the illegal activity. *Roberson,* 2006 WI 80, ¶ 35. Thus, if the in-court identification has an independent source, the in-court identification is admissible.

The State argues that CAS' in-court identification is based on his "extensive interaction" and "considerable time" spent with P prior to the shooting. Yet considering that it appears in the bulk of the two 20 to 30 minute encounters CAS was a front-facing passenger in a car driven by P, it is unlikely CAS was acquainted enough with P's personal facial characteristics to make an accurate identification in-court or otherwise. Indeed the trial court found:

> [CAS'] degree of attention is difficult to pinpoint. On the one hand, it is likely he was paying attention to the person in this physical confrontation who shot him. However, it is also likely that he was paying attention to the gun and the situation, as well as the robbery that had recently occurred to him. (R.28, p.4, A-Ap. 105.)

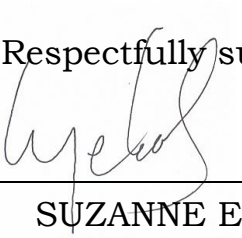
As noted previously, the time between the robbery at gunpoint and the shooting was less than thirty (30) minutes which likely put CAS in an emotional state which hindered the accuracy of his recollection. Ultimately, the State fails to prove that CAS' in-court identification was not tainted by the showup or, for that matter, that the in-court identification was not merely a product of pointing at the person sitting next to defense counsel. Therefore, without a sufficient independent basis for identifying Roberson as the shooter, the in-court identification was rightly suppressed.

CONCLUSION

WHEREFORE, for the reasons explained above, Defendant-Respondent Stephan I. Roberson respectfully requests the Court of Appeals affirm the order of the Circuit Court suppressing both the out-of-court and in-court identifications made by CAS.

Dated: February 14, 2018

Respectfully submitted,



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BRIEF CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c), Stats., for a brief produced using the following font:

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I hereby certify that the electronic version of the brief and appendix in Case No. 2017AP1894-CR is identical to the printed version.

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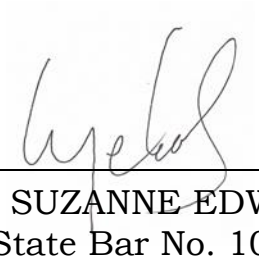

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CERTIFICATE OF MAILING

STATE OF WISCONSIN)
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I, Suzanne Edwards, a licensed Wisconsin attorney, hereby certify that copies Defendant-Respondent's Brief Appeal No 2017AP1894-CR were placed in the U.S. Mail, with proper postage affixed this 14th day of February, 2018, addressed to the following as indicated below:

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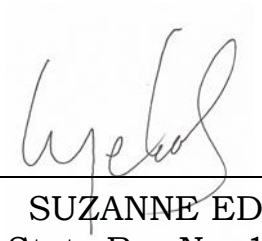

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