

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET  
Suite 10400  
WILMINGTON, DE 19801  
PHONE: (302) 255-0656  
FASCIMILE: (302) 255-2274

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Stephen M. Walther, Deputy Attorney General  
Department of Justice  
Carvel State Office Building  
820 N. French Street  
Wilmington, DE 19801

Raymond M. Radulski, Esquire  
Public Defender's Office  
Carvel State Office Building  
820 N. French Street  
Wilmington, DE 19801

**Re: *State v. John E. Martin***  
**Def. I.D.: 0710012907**

Dear Counsel:

As you know, the defendant has moved to suppress evidence relating to a "show-up" identification made by the victim in this case shortly after a robbery allegedly perpetrated by the defendant. The robbery occurred just outside of the Sunday Breakfast Mission in the 200 block of Poplar Street in Wilmington.

A hearing on the motion to suppress was held on February 29, 2008. At the hearing, the victim testified that he was entering the Sunday Breakfast Mission when he was approached by a large black male with facial hair. In court, the victim identified the defendant as the large black male who approached him. According to

the victim, after he and the defendant walked together approximately 10 to 15 feet away from the entrance of the Mission, two other black males approached them and, along with the defendant, began to ask him for money and root through his pockets. At some point in this process, the defendant pushed the victim to the ground and straddled him while the three assailants continued to remove items from his pocket and remove his shoes. After taking five dollars and possibly a driver's license from the victim,<sup>1</sup> the three men fled along Front Street making a turn on to Lombard Street. The victim estimated that the entire encounter lasted four to five minutes. For most of this encounter, the victim claimed that he was able clearly to see the person he identified as the defendant who was no more than one to four feet away from him throughout the encounter.

The victim testified that approximately five minutes after the robbery, one or two Wilmington Police officers returned in a marked police car with an individual in custody. The victim was immediately able to identify the defendant as the large, black, bearded male that robbed him. Indeed, he testified that he spontaneously told the officers "that's the guy" before he was even asked to identify the person who was in custody. He testified that he had no doubt that the person in custody was the same person who robbed him. He also testified that he had no doubt that the person who robbed him was the defendant.

The defendant has moved to suppress evidence relating to the victim's "show-up" identification on the grounds that the confrontation was unduly suggestive and in violation of his due process rights. The standard by which this Court should measure the constitutionality of a "show up" identification is well-settled in

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<sup>1</sup> The police report indicates that the defendant was not in possession of a driver's license or a \$5 bill when he was searched by the police.

Delaware:

An identification will not pass constitutional muster where it is ‘so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.’ That a confrontation is suggestive, without more, however, cannot amount to a due process violation; the unnecessarily suggestive identification procedure must also carry with it the increased danger of an irreparable misidentification. In other words, if the Court determines under the totality of the circumstances that a line-up is impermissibly suggestive but nonetheless reliable, evidence of the confrontation will not be excluded at trial.<sup>2</sup>

The test requires the Court to make two determinations: (1) whether the confrontation was unnecessarily suggestive; and (2) whether there existed a likelihood of misidentification.<sup>3</sup> As to the first question, the Court is satisfied that the “show-up” identification was not unnecessarily suggestive. The defendant was brought back to the scene of the crime within minutes of the crime’s commission.<sup>4</sup> The victim identified the defendant as the perpetrator immediately upon seeing him and before he was asked to do so. The identification was unequivocal. While it is true that any “show-up” identification is suggestive, under the totality of the circumstances presented here, this one was not “unnecessarily” so.<sup>5</sup>

The Court is also satisfied that even if the confrontation was “unnecessarily suggestive,” there was little likelihood of misidentification under the circumstances

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<sup>2</sup> *Younger v. State*, 496 A.2d 546, 550 (Del. 1985)(citation omitted).

<sup>3</sup> *See Richardson v. State*, 673 A.2d 144, 147 (Del. 1996)(citation omitted).

<sup>4</sup> The police report differs somewhat from the victim’s testimony in terms of the timing of the identification. Viewing the evidence in a light most favorable to the defendant, the identification occurred within a half hour of the commission of the offense (and likely much sooner).

<sup>5</sup> *See Murray v. State*, 1985 Del. LEXIS 512, at \*4 (under very similar circumstances, the Court concluded that the show-up identification was not “unnecessarily suggestive”).

in which the identification occurred.<sup>6</sup> The victim testified that he was able to see the defendant very clearly and in close proximity throughout the robbery. His identification of the defendant was spontaneous and unequivocal. It also occurred within minutes and no more than a half hour after the crime occurred. The crime occurred in daylight and there was no obstruction of the victim's view of the perpetrators. Under the totality of these circumstances, there is little likelihood of misidentification.<sup>7</sup> To the extent there are discrepancies between the victim's testimony and the police report,<sup>8</sup> these discrepancies can be addressed with the jury in defense of the charges at trial.<sup>9</sup>

Based on the foregoing the motion to suppress is **DENIED**.

Very truly yours,

Judge Joseph R. Slights, III

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<sup>6</sup> *Richardson*, 673 A.2d at 148 (“Even assuming *arguendo* that the identification was impermissibly suggestive under the totality of the circumstances there was a not a substantial likelihood of misidentification.”).

<sup>7</sup> *See Id.* at \*\*4-5 (under similar circumstances, the Court concluded that “there is little likelihood of misidentification. . .”).

<sup>8</sup> Per agreement of the parties, the Court received the police report in evidence in lieu of the officer's testimony.

<sup>9</sup> For its part, the Court found the victim's account of the crime and his subsequent identification of the defendant to be credible. Needless to say, defendant may challenge that account with cross examination at trial.