STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1417

State of Minnesota,
Respondent,

vs.

Antonio Rashod Baker,
Appellant.

Filed September 3, 2019
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-16-20315

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota; and

Adam E. Petras, Special Assistant Hennepin County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Schellhas, Judge; and

Peterson, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

After the victim of a robbery identified appellant Antonio Baker as one of the men who robbed him, Baker was charged with the offense. Before trial, Baker sought to exclude evidence of the out-of-court identification. The district court admitted the evidence, ruling that, while the identification procedure was unnecessarily suggestive, the victim's identification was nonetheless reliable. After a jury trial, Baker was convicted of first-degree aggravated robbery. He now appeals, arguing (1) that the district court erred by admitting the identification evidence and (2) that, even if the evidence was admissible, it was insufficient as a matter of law to prove his identity as the perpetrator beyond a reasonable doubt. We affirm.

FACTS

On July 29, 2016, at around 2:30 in the morning, M.M. was walking along East 29th Street in Minneapolis when he was approached from behind by two men. The men took from him a backpack that contained, among other things, a cell phone. The robbery was violent—M.M. was punched, kicked, and threatened with a gun. After the men ran away, M.M. used a second cell phone, which had been in his pocket and was not taken from him, to call 911.

During the 911 call, which was conducted through an interpreter, M.M. provided descriptions of the men, said that one of them had a gun, and told the operator the direction in which they ran. M.M. described the men as black, one about 30 and the other about 35 or 38 years old. He said that one of the men had long hair but did not describe the other's

hair. While his description of their clothing was somewhat jumbled, he made it clear that one man was wearing a white tee shirt and the other was wearing a white sweatshirt. M.M. also said that one man was wearing black pants and the other was wearing blue shorts or pants. The 911 call ended when a police officer arrived at the scene.

Shortly after the police officer met M.M. at the scene, other officers responding to the 911 call arrested two men, Baker and Frank Blount, several blocks away. The officers found a cell phone in Blount's pocket. M.M. was then driven to the site of the arrest, where he was shown the cell phone and identified it as his. The police then led Baker and Blount, separately, to the front of the squad car in which M.M. was sitting so that he could see them. M.M. identified Baker and Blount as the two men who had robbed him.

A few days later, Baker was charged with one count of first-degree aggravated robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2014). After an omnibus hearing, the district court ruled that the show-up identification procedure was unduly suggestive but that M.M.'s identification of Baker was admissible. Baker was tried before a jury, which deadlocked, leading to a mistrial. Baker was retried and found guilty. The district court entered a conviction on the verdict and sentenced Baker to 41 months' imprisonment.

D E C I S I O N

I. The district court did not err by admitting evidence of the identification.

Baker's first argument is that the district court denied him due process by admitting evidence of the identification.

A. Legal standard and standard of review

In general, "[e]videntiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). But "substantive due process prohibits the admission of eyewitness identifications the police obtained through unnecessarily suggestive procedures that create a substantial likelihood of misidentification." *State v. Hill*, 871 N.W.2d 900, 907 (Minn. 2015). To evaluate the permissibility of an identification procedure, courts use a two-step test. The first step requires the court to determine whether the identification procedure was "unnecessarily suggestive." *State v. Taylor*, 594 N.W.2d 158, 161 (Minn. 1999). If the procedure was unnecessarily suggestive, the court then must determine whether it caused a "very substantial likelihood of irreparable misidentification." *Id.* (quotation omitted). "Whether a . . . government action violates substantive due process is a constitutional question" that is subject to de novo review. *State v. Rey*, 905 N.W.2d 490, 495 (Minn. 2018).

The state argues that Baker, in his briefing, relies on evidence from trial that was not introduced at the omnibus hearing and that the standard of review is therefore plain error, because Baker did not again move for exclusion of the identification after the trial evidence became known. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (describing plain-error test for evaluating an assertion of error not raised before the district court). But the only mention of M.M.'s trial testimony that appears in this portion of Baker's argument is counterfactual: Baker notes what M.M. would have said if he had testified at the suppression hearing. Though Baker, in his briefing, does place great weight

on M.M.'s trial testimony, he does so in support of his argument that there was insufficient evidence to sustain the jury's conviction. Baker's argument against admission of the show-up identification evidence does not rely on M.M.'s testimony at trial, and so plain-error review does not apply.

B. The evidence at the omnibus hearing

At the omnibus hearing, the state introduced testimony from two officers who responded to the 911 call and exhibits consisting of the recording and transcript of M.M.'s 911 call, squad-car video of the identification, and a map of the area. At the beginning of the hearing, defense counsel stipulated that, for the purposes of the hearing, when M.M., during the 911 call, used the word translated as "t-shirt," he actually meant "tank top," and that, when M.M. used the word translated as "sweatshirt," he actually meant "t-shirt."

The first witness to testify was Officer Charles Cape. Cape said that, when he spoke to M.M. at the scene, M.M. described the two men who attacked him as black men, one with a bald head and a white shirt, the other with dread-locked hair. M.M. told Cape that he was confident he could recognize the men. After this brief conversation, another squad car reported that they had two possible suspects, so Cape drove M.M. to their location for a show-up. Both the drive to the location and the show-up itself were recorded by the squad vehicle's camera. Cape testified that he did not say anything to M.M. outside of the recording that could have influenced M.M.'s identification during the show-up.

The squad video shows the drive to where Baker and Blount were being detained. In the video, when Cape and M.M. arrive, another officer walks up to M.M.'s window, outside the view of the camera, and asks M.M. for the passcode to his phone. The officer

leaves, then walks back, and asks M.M., "Is that yours?," apparently referring to the stolen phone. M.M. responds, "Yes." After some further conversation about the phone, Cape says to M.M., "We've got some guys here. They're gonna pull them out. They can't see you. I just need you to tell me if . . . that's the person that did this, okay?" Baker, handcuffed, is walked in front of the squad vehicle by a police officer. He is illuminated both by headlights from the squad car recording the show-up and by a spotlight on the side of a nearby ambulance. He has a shaved head and is wearing a white tee shirt and gray sweatpants. M.M. can be heard identifying him as one of his assailants. Then Blount, also handcuffed, is taken from another police vehicle; he has mid-length dreadlocks and is wearing a white tank top and black shorts with white stripes. M.M. says that the second man also is one of the men who attacked him. M.M. finally says that he believes that the first man—Baker—had the gun. The video then ends.

The state's second witness was Officer Luke Eckert. He described the search for suspects that he conducted. After briefly driving around the area, Eckert and his partner saw two men, both wearing white shirts, one of whom had dreadlocks. The police officers stopped the men, and other officers arrived. The officers then found the victim's phone in Blount's pocket. Eckert did not testify about the conduct of the show-up itself.

C. The identification evidence was admissible.

After hearing argument from the parties, the district court ruled that, while the identification procedure was unnecessarily suggestive, the totality of the circumstances nonetheless established that the identification was reliable. The district court declined to

suppress either the show-up identification or any in-court identification of the defendant by M.M.

1. The identification procedure was unnecessarily suggestive.

A procedure is unnecessarily suggestive if "the defendant was unfairly singled out for identification." *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995). One-person show-ups and single-photograph line-ups are recognized as being suggestive, but not per se unnecessarily suggestive. *Taylor*, 594 N.W.2d at 161-62; *Ostrem*, 535 N.W.2d at 921. But when police single out a suspect "from the general population based on a description given to them by the victim, and then proceed[] to present him to the victim, in handcuffs, for identification in a one person show-up," such presentation is quite likely to be unnecessarily suggestive. *Taylor*, 594 N.W.2d at 162.

Here, the state concedes that the procedure was unnecessarily suggestive, and we agree. The procedure here closely followed *Taylor*'s description of an unnecessarily suggestive show-up: Baker was singled out from the general population, handcuffed, and shown to M.M. under police control, surrounded by police vehicles. *Cf. id.* (describing, in dicta, an unnecessarily suggestive show-up). Further, just before the show-up, M.M. was shown a phone (which he identified as his), implying that it had been recovered from the men that he was about to be shown. *Cf. State v. Anderson*, 657 N.W.2d 846, 851 (Minn. App. 2002) (holding that an identification procedure was unnecessarily suggestive when police comments "suggested to the eyewitness that the police *actually* had one of the burglars in custody").

2. The identification procedure did not create a substantial likelihood of irreparable misidentification.

The parties' dispute focuses on the second prong. "An unnecessarily suggestive identification procedure does not preclude admission of the identification testimony unless there is a substantial likelihood of irreparable misidentification." *Id.* at 851. To determine whether identification evidence is reliable despite improper procedure, courts are instructed to examine the totality of the circumstances via five factors. *Ostrem*, 535 N.W.2d at 921. The five factors are:

> 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 by the witness at the [show-up];
> 5. The time between the crime and the confrontation.

Id.

a. Opportunity to view the perpetrator

Whether a witness had a good opportunity to view a perpetrator is evaluated based on the amount of time that the witness could see the perpetrator, *State v. Jones*, 556 N.W.2d 903, 913 (Minn. 1996) (holding that this factor cut against admission where the witness had only a brief opportunity to view the perpetrators), the adequacy of the lighting and the witness's distance from the perpetrator, *Ostrem*, 535 N.W.2d at 922 (holding that this factor favored admission when the witness saw the perpetrator "during daylight hours from relatively close range"), and whether the two faced each other, *Seelye v. State*, 429 N.W.2d 669, 673 (Minn. App. 1988) (holding that this factor favored admission when the witness

saw the perpetrator "through a glass door on a well-lit porch," talked "face-to-face" with the perpetrator, and "saw him as he pushed his way into the house").

Here, M.M. had an adequate, if not perfect, opportunity to view the men who robbed him. While the robbery did occur at night, this fact does not automatically mean that M.M. lacked the opportunity to view the robbers. *See McDuffie v. State*, 482 N.W.2d 234, 236 (Minn. App. 1992) (holding that the victim of a nighttime robbery had an opportunity to view his assailants), *review denied* (Minn. Apr. 13, 1992). Though the men approached him from behind, M.M. was able to see enough to know that one had a gun. And M.M. was also in very close proximity to the men—close enough that they could punch him—a fact that also favors M.M.'s opportunity to view the robbers. Thus, M.M.'s opportunity to view the robbers weighs, albeit not heavily, in favor of admission.

b. Degree of attention

Baker argues that the facts of this crime suggest that M.M. would not have paid close attention to the robbers, because the presence of a weapon can lead a witness to focus on the weapon rather than other circumstances, and because the assault on M.M. would have led him to focus on defending himself rather than on the physical characteristics of the robbers.

Caselaw has not established that the presence of a weapon necessarily reduces a victim's degree of attention. In the case Baker relies upon, the witness testified to having focused on the weapon. *Jones*, 556 N.W.2d at 913. That is not the case here.

And the fact that a strange or threatening event occurs has, in other cases, been deemed to lead a victim to pay closer attention to surrounding circumstances. *See, e.g.*,

State v. Lushenko, 714 N.W.2d 729, 733 (Minn. App. 2006) (reasoning that a strange and suspicious event led the witness to pay a high degree of attention), *review denied* (Minn. Dec. 12, 2006). Here, the fact that M.M. was robbed by two men likely led him to pay a higher degree of attention to the men than he would have had they merely been passersby.

Several cases treat this degree-of-attention factor as inquiring into whether the witness's attention was impaired in some way. *State v. Adkins*, 706 N.W.2d 59, 63 (Minn. App. 2005) (holding that this factor weighed in favor of admission because the witness "was coherent, aware, and attentive"); *Seelye*, 429 N.W.2d at 673 (holding that a witness paid adequate attention to a perpetrator despite having consumed four or five beers and having smoked half a joint). In this case, M.M.'s conversations with the 911 operator and Officer Cape indicate that M.M. was "coherent, aware, and attentive." *Adkins*, 706 N.W.2d at 63.

The degree-of-attention factor weighs in favor of admitting the identification.

c. Accuracy of prior description

The third factor is the accuracy of prior descriptions. M.M. described his assailants as two black men, one around 30, the other in his later 30s. One man was wearing a white tank top, the other was wearing a white tee shirt; one had long black pants, the other had blue shorts; one had dreadlocks, and the other was bald. The only part of this description that did not match Baker and Blount was the pants: Baker was wearing gray sweatpants, and Blount was wearing black shorts with white stripes.

Baker argues that the accuracy of the description does not weigh in favor of admissibility because M.M.'s description to the 911 operator did not match Baker's pants

and because M.M. did not describe his assailants' height, weight, facial features, or skin tones. But one inaccurate detail does not make a description unreliable as a whole. *See Seelye*, 429 N.W.2d at 673 (classifying a description as "on the whole, accurate" even though "[t]he height was off, and [the witness] did not notice a mustache"). And, while there are cases in which a witness provides a high degree of detail, *see, e.g.*, *Ostrem*, 535 N.W.2d at 918, less detailed descriptions have also been held to favor admission. For example, in *State v. Adkins*, a burglar was described as "an older African-American man who had 'larger lips and larger ears,' and who was wearing a large coat." 706 N.W.2d at 61. The *Adkins* description provided no more descriptiveness than did the description in this case, and the accuracy of that description was deemed to favor admission. *Id.* at 63.

Thus, Baker's sweatpants notwithstanding, M.M.'s description of his assailant was a sufficiently accurate description of Baker to weigh in favor of admission of the identification evidence.

d. Level of certainty

The fourth factor is the witness's level of certainty. At oral argument, Baker's attorney argued that M.M. actually was not certain, because he only said that he was certain in response to a question by Officer Cape and not independently. But the fact that M.M. was asked if he was certain does not weigh against reliability. In cases where uncertainty has weighed against reliability, the witness has affirmatively expressed such uncertainty. *See, e.g.*, *Seelye*, 429 N.W.2d at 673 (quoting the witness as saying, "If this man had a thinner mustache and weighed 160 pounds and about five foot seven inches, I would say that's definitely your man," and noting that the defendant was "five foot nine"); *Jones*, 556

N.W.2d at 906, 913 (holding that a witness's statement that she wasn't "sure if that's him or not because [she] really didn't get a good look at his face" weighed against reliability). M.M. did not express any uncertainty when he said that Baker was one of the men who robbed him. And when Officer Cape asked if he was certain, M.M. said that he was. Thus, it is clear that M.M. was certain.

Nonetheless, Baker argues that this court should give this factor less weight because social-science research has shown that there is little relationship between a witness's certainty and the accuracy of an identification. But Baker cites no caselaw suggesting that this court may adjust the law according to social-science research. This court is "bound by supreme court precedent." *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). Previous attempts to persuade this court to change the rules regarding admission of identification evidence have been rejected because "we are an error-correcting court and it is not the role of this court to abolish established judicial precedent." *Adkins*, 706 N.W.2d at 63. We cannot, and therefore will not, alter the established test. M.M.'s certainty in his identification favors the reliability of the identification.

e. Temporal proximity

The final factor is the amount of time between the observation and the identification. A period of 48 hours between the observation and the identification has been held to favor admission of an identification. *Ostrem*, 535 N.W.2d at 922. Here, the identification took place within 30 minutes of the crime, so it strongly favors reliability.

Overall, despite the unnecessarily suggestive method of conducting the identification, M.M.'s identification of Baker was sufficiently reliable to be admitted, and the district court did not err by admitting it.[1]

II. The evidence is sufficient to support the conviction.

Baker argues that his conviction must be reversed because the evidence is insufficient to prove his identity as one of the perpetrators.

A. Standard of review and legal standard

As an initial matter, the state argues that, so long as out-of-court identification evidence is admissible, its sufficiency is a question of credibility for the jury, to which this court must defer.

The state's argument is not wholly without support. The United States Supreme Court has suggested that, if an unnecessarily suggestive identification process results in evidence that is nonetheless admissible because of its independent reliability, the evidence is sufficient to prove identity as a matter of law, and whether to rely on it becomes a jury question. *Manson v. Brathwaite*, 432 U.S. 98, 116, 97 S. Ct. 2243, 2254 (1977) ("[W]e cannot say that under all the circumstances of this case there is a very substantial likelihood of irreparable misidentification. Short of that point, such evidence is for the jury to weigh." (quotation omitted)). And in *State v. Gluff*, a case on which Baker relies in arguing against the sufficiency of the evidence, the Minnesota Supreme Court reversed and remanded for

[1] Baker argues that this court should consider the fact that this was a cross-racial identification, which he argues is a factor that can reduce the reliability of an identification. But, as discussed above, this court lacks the authority to change the law. The supreme court set out a five-factor test, so this court applies the five-factor test.

a new trial, instructing the district court to consider the admissibility of the lineup identification in light of several supreme court cases regarding the admissibility of identifications that are made via suggestive procedures. 172 N.W.2d 63, 65-66 (Minn. 1969). Thus, even though the court in *Gluff* described the identification as being without "probative value," *id.* at 65, its holding, in fact, concerned admissibility, not sufficiency.

But there is Minnesota caselaw analyzing the sufficiency of evidence separately from its admissibility. *See, e.g.*, *State v. Stauffacher*, 380 N.W.2d 843, 848-50 (Minn. App. 1986) (determining, first, that an identification was sufficient to support the jury's verdict and, second, that the identification was admissible), *review denied* (Minn. Mar. 21, 1986). And there does not appear to be caselaw explicitly holding that the sufficiency of an identification may not be considered apart from the admissibility of such an identification. Thus, we will address Baker's argument that the evidence was insufficient as a matter of law to sustain the jury's verdict.

"In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jury to reach the verdict it did." *State v. Yang*, 627 N.W.2d 666, 672 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). "The general rule in Minnesota is that a witness must have an opportunity for accurate observation." *State v. Hicks*, 380 N.W.2d 869, 873 (Minn. App. 1986). "[A] conviction can rest on the uncorroborated testimony of a single credible witness." *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). But, when there are

"additional reasons to question the victim's credibility," corroboration may be required. *See id.* (describing cases in which there were reasons to question the victim's credibility).

B. The trial evidence

At trial, M.M. testified to the robbery and his identification of Baker. M.M. testified that he spoke with Officer Cape until Cape received a call saying that other officers had picked up two people and wanted M.M. to identify them. Police told M.M. that they had found a phone, and M.M. identified it as his. M.M. described identifying Baker and Blount as his attackers. However, M.M. also admitted that he lost his glasses when the assault started and had not recovered them, so he recognized the men only by their clothing, hairstyles, and physical stature.

On cross-examination, M.M. said that he had described one of the men as bald during the 911 call and that he had initially described one of the men's pants as black but later corrected himself to say that they were gray. The transcript of the call shows that he only described one man as having long hair and did not mention the other man's hairstyle; it also does not contain any mention of gray pants. Finally, M.M. agreed that, during the assault, it was pitch-black outside, the men started punching him within seconds of arriving, he immediately covered his face to protect it, and he had never seen either of the men before the robbery.

Other evidence at trial showed that Baker was found with Blount near the scene of the robbery and that M.M.'s cell phone was found on Blount.

C. The evidence is sufficient.

The evidence of M.M.'s identification of Baker as the perpetrator, his presence with Blount near the scene immediately after the robbery, and the presence of M.M.'s cell phone on Blount tend to show that Baker was one of the perpetrators. Baker argues that the evidence is insufficient because M.M.'s identification of him was insufficient. Although he does not describe them as such, Baker identifies four reasons that were "additional reasons to question the victim's credibility." *See id.* Specifically, he argues that M.M.'s identification (1) was based on a limited opportunity to view the robbers, (2) was adversely affected by stress, (3) was not bolstered by his confidence, and (4) was likely influenced by the suggestive police procedure.

Baker's first argument is that M.M. had a limited opportunity to view the robbers. But, in each of the cases on which Baker relies, this court concluded that an eyewitness had an adequate opportunity for accurate observation when the witness saw the perpetrator "face-to-face for several minutes." *Yang*, 627 N.W.2d at 672; *Hicks*, 380 N.W.2d at 873. Here M.M. testified that he struggled with the two men for 5 or 10 minutes and that, throughout the confrontation, all three were close enough for punching and grappling. These circumstances gave M.M. an adequate opportunity to view the men who robbed him.

Baker next argues that the presence of a gun during the robbery inherently means that M.M.'s identification was adversely affected by stress, relying on *State v. Gluff*, in which an eyewitness's identification was held insufficient in part because the robber pointed a gun at the eyewitness. 172 N.W.2d at 64-65. But the court in *Gluff* did not speculate that the gun may have caused the eyewitness stress; it relied on the witness's

testimony that, once the gun was pointed at her, "her eyes were riveted on the gun." *Id.* at 64. In contrast, M.M. testified that he was barely able to see the gun, which was pointed at his back. M.M.'s identification is not insufficient under *Gluff*.

Baker's third argument—that M.M.'s certainty in his identification does not make it sufficient—is unsupported by any citation to legal authority. None of the cases Baker cites considering the sufficiency of eyewitness testimony relies on the eyewitness's certainty as a factor. And, because the general rule is that sufficiency depends on the adequacy of the eyewitness's opportunity for observation, *Hicks*, 380 N.W.2d at 873, our analysis does not depend on M.M.'s certainty in any event.

Baker's final argument is that the suggestive identification procedures so tainted the identification as to render it insufficient to support the jury's verdict. This argument is similarly unsupported by a citation to governing law and essentially transposes his argument against admissibility into the context of sufficiency. But this court has not considered the suggestiveness of an identification procedure when evaluating the sufficiency of the identification. *See Yang*, 627 N.W.2d at 672-73; *Hicks*, 380 N.W.2d at 873. The suggestiveness of a lineup goes to admissibility, not sufficiency, and Baker's attempt to rely on it here fails.

The evidence of M.M.'s identification of Baker as one of his robbers was sufficient to support the jury's verdict.

III. Baker's pro se arguments

Baker submitted a pro se supplemental brief. It begins by listing 15 issues.[2] Some of the issues have no apparent connection to this appeal, some lack any record support, and some have already been argued by Baker's appellate counsel. But it does not appear that any of these issues are argued in the rest of his brief.

After the initial list of issues, the first portion (and the majority) of Baker's brief consists of a series of citations to hearing transcripts or the state's brief. These are accompanied by, first, either a quotation or sentence fragment summarizing that part of the record and, second, a case citation. But the cases he cites have no apparent connection to any relevant issue, and Baker does not even assert error, much less provide argument connecting the cases he cites to the portions of the record he identifies. "An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (quotation omitted), *aff'd*, 728 N.W.2d 243 (Minn. 2007). Thus, the first portion of Baker's brief fails to present any reviewable claim of error.

Following this portion of his brief, Baker appears to assert two errors. First, he asserts that he was found guilty "with unconstitutional jury instructions, tainted false evidence (identification), and no physical evidence." But the only cases he cites are

[2] These are, as identified by Baker: 1. Theories; 2. Hearsay; 3. Racial Profiling; 4. Racial Discrimination; 5. Wrongful Arrest; 6. *Brady* Violation; 7. Spoliation of Evidence; 8. Suppressed Evidence; 9. Destruction of Evidence; 10. Lack of Evidence; 11. Double Jeopardy; 12. Perjury; 13. Tampering of Evidence; 14. Wrongful Imprisonment; and 15. Conspiracy.

Slutzker v. Johnson, 393 F.3d 373 (3rd Cir. 2004), which concerns the requirements for prosecutorial disclosure of exculpatory evidence, and a trio of cases concerning alternative-perpetrator evidence: *Troxel v. State*, 875 N.W.2d 302 (Minn. 2016); *State v. Jones*, 678 N.W.2d 1 (Minn. 2004); and *State v. Hawkins*, 260 N.W.2d 150 (Minn. 1977). These cases do not appear to support his assertion of error in any way, and Baker provides no argument explaining his citation to them.

Finally, he asserts that the identification was unduly suggestive and that M.M. did not say anything about one of the robbers being bald until after the show-up procedure. But the record shows that M.M. told Officer Cape that one of the robbers was bald before the show-up took place. And the argument that the show-up identification was inadmissible has been considered and rejected above.

Affirmed.