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*Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A20-1338**

State of Minnesota,
Respondent,

vs.

Tracy Cortez Stringer,
Appellant.

**Filed October 11, 2021**
**Affirmed**
**Bratvold, Judge**

Ramsey County District Court
File No. 62-CR-19-6587

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

## NONPRECEDENTIAL OPINION

**BRATVOLD**, Judge

In this appeal from the final judgments of conviction for drive-by shooting and unlawful possession of a firearm, appellant seeks to overturn the jury's guilty verdicts. First, appellant argues the district court prejudicially erred by denying his motion to

suppress evidence from an eyewitness identifying him as the shooter during a show-up one hour after the shooting. Second, and in the alternative, appellant argues respondent did not prove the shooter's identity beyond a reasonable doubt. Because the district court did not err when it denied appellant's motion and because sufficient admissible evidence supports appellant's convictions, we affirm.

## FACTS

Respondent State of Minnesota charged appellant Tracy Cortez Stringer with a drive-by shooting under Minn. Stat. § 609.66, subd 1e(a) (2018), and unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2018). The following summarizes the relevant record from the pretrial evidentiary hearing and the jury trial.

On Friday, August 30, 2019, police received a report of shots fired at a St. Paul apartment complex. At about 1:25 p.m., officers responded and "began to canvas the area looking for any witnesses, evidence or suspects." They found two bullets in A.G.'s apartment on the first floor.

D.D. told police she and her two-year-old son lived in an apartment directly above A.G. on the second floor, and she saw someone fire a gun from a white, four-door SUV. She stated that, before the shooting, she saw M.B. exit the white SUV, along with three other people. D.D. told police on more than one prior occasion that M.B. had confronted A.G. from outside the apartment building. During Stringer's jury trial, testimony established that M.B. believed A.G. caused M.B.'s removal from the apartment building, and this dispute escalated the night before the shooting when M.B. returned to the window outside A.G.'s apartment, along with her boyfriend and her sister (sister). The threesome

threatened A.G., who then spoke to her landlord and the police. At their recommendation, A.G. left for the weekend with her child.

D.D. told police that, on the day of the shooting, she put her son down for a nap and then heard a commotion outside. D.D. looked out her second-floor window and saw M.B., M.B.'s boyfriend, sister, and sister's boyfriend. D.D. did not know the names of M.B.'s boyfriend, sister, or sister's boyfriend, but she recognized all three. D.D. also recognized the white SUV from earlier fights between M.B. and A.G. D.D. had her television on yet heard knocking on A.G.'s window. Hoping to avoid waking her son, D.D. told them through her open window that A.G. was not there, they should leave, and if they did not leave, she would call the police.

The group argued with D.D. for five to ten minutes. D.D. left the window, went to her neighbor's apartment in search of a phone, failed, and returned to the window within minutes. D.D. then saw M.B. take her child out of the SUV and walk away. According to D.D., sister got into the driver's seat of the SUV, M.B.'s boyfriend sat in the back seat, and sister's boyfriend sat in the front passenger seat. The SUV backed up a few yards. With the passenger door open and facing the apartment building, sister's boyfriend fired three shots toward A.G.'s apartment, and the SUV drove away.

D.D. told police where the SUV was located when the shots were fired. Police later found two "undeformed" bullet casings near this location. D.D. described the white, four-door SUV, and sister's boyfriend, who she said was a Black man, about six feet tall, dressed in all black, and wearing his hair "on the top of his head."

About one hour after the shooting, while police were still investigating, a white, four-door SUV returned to the street outside the apartment. Police stopped the SUV and identified the two occupants as sister and sister's boyfriend, Stringer. Sister was driving and Stringer was in the front passenger seat. Stringer matched D.D.'s description except that he was wearing blue jeans, not black pants. Stringer wore his hair in a binder on his head. Officers searched the SUV but did not recover any weapons. Police arrested Stringer and sister.

One hour and seven minutes after the incident, police asked Stringer and sister to exit the squad car while D.D. watched from her apartment window on the second floor. Stringer and sister were handcuffed. D.D. identified sister as the driver and Stringer as the shooter, stating, "that's them, for sure." Police recorded D.D.'s identification of Stringer on their body cameras.

Before trial, Stringer moved to suppress the evidence from the show-up identification at D.D.'s apartment and any resulting in-court identification. The district court held an evidentiary hearing on December 18, 2019, and received police reports, body-camera recordings, and testimony from D.D. and the responding officers, as summarized above. D.D.'s testimony is summarized above. During the evidentiary hearing and while under oath, D.D. again identified Stringer as the shooter. After the hearing, the district court issued its findings of fact, conclusions of law, and order denying the motion.

During Stringer's five-day jury trial, D.D.'s testimony differed from that given at the pretrial hearing. D.D. repeated that, after the confrontation at the window, sister's

boyfriend entered the front passenger seat. D.D. testified "somebody" shot from the front passenger seat "into [A.G.'s] window." She explained that she saw who "got in what side of the car" and it "played a part of me assuming who shot the gun." D.D. also testified she did not see the gun, but she heard the shots. Under cross-examination, D.D. testified she "didn't see who was shooting"; she remembered "the passenger door being open when the shots [were] fired, and I'm going to assume that's where the gunshots came from, from the passenger side." On redirect, D.D. testified she had been truthful in her testimony at the evidentiary hearing and in her statements to police on the day of the shooting. The district court received as evidence D.D.'s testimony from the evidentiary hearing, her recorded statement to police, and the body-camera recordings. An officer testified Stringer gave a statement to the police after he was arrested and said he knew nothing about the shooting.

The jury found Stringer guilty of both charges, and the district court imposed executed concurrent sentences of 60 months in prison.

Stringer appeals.

## DECISION

### I. The district court did not err by denying Stringer's motion to suppress evidence from the show-up identifying Stringer as the shooter.

Stringer argues the district court erred by admitting D.D.'s identification testimony from the evidentiary hearing because "[t]he show-up was unnecessarily suggestive" and "created a substantial likelihood of irreparable misidentification." The state argues the district court did not err, but even if it did, it is a harmless error because D.D. also identified

Stringer at the evidentiary hearing. Stringer contends D.D.'s in-court identification was tainted by the suggestive show-up.

Generally, a district court's evidentiary rulings are reviewed on appeal for abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). But whether an identification procedure is so suggestive as to violate due process is reviewed de novo. *State v. Hooks*, 752 N.W.2d 79, 83–84 (Minn. App. 2008). When reviewing a district court's decision denying a motion to suppress evidence, an appellate court "may independently review the facts and determine, as a matter of law, whether the district court erred." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). "The district court's factual findings are reviewed under the clearly erroneous standard." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

To determine "whether a pretrial identification must be suppressed," appellate courts conduct a two-part inquiry. *State v. Taylor*, 594 N.W.2d 158, 161 (Minn. 1999). "The first inquiry focuses on whether the procedure was unnecessarily suggestive." *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995) (citing *State v. Marhoun*, 323 N.W.2d 729, 733 (Minn. 1982)). The first inquiry "turns on whether the defendant was unfairly singled out for identification." *Id.* If the identification procedure was unnecessarily suggestive, then the second inquiry determines whether "the totality of the circumstances shows the witness's identification has adequate independent origin" and did not create "a very substantial likelihood of irreparable misidentification." *Id.*

### A. The show-up identification was not unnecessarily suggestive because D.D. recognized Stringer as sister's boyfriend and described him to police before the show-up.

A show-up identification is a "one-to-one confrontation between suspect and witness to crime." *Taylor*, 594 N.W.2d at 159 n.1 (quotation omitted). The Minnesota Supreme Court has stated that "a one-person show-up is by its very nature suggestive" but that the question for the appellate court is "whether the show-up procedure used here was unnecessarily suggestive." *Id.* at 162.

The facts in *Taylor* inform our understanding of the supreme court's ruling allowing evidence from a show-up identification. The eyewitness was assaulted in the laundry room of her sister's apartment building by someone she knew as "Bigelow," a man who lived in the same apartment building. *Id.* at 160. The eyewitness had previously seen her assailant at least ten times. *Id.* at 162. Before the show-up, the suspect "acknowledged going by the nickname 'Bigelow.'" *Id.* at 161. Police performed a one-person show-up while the eyewitness stood in a second-floor window looking down at the suspect. *Id.* at 160. The suspect, "still in handcuffs, was removed from the patrol car," and the eyewitness identified him as "the man she knew as 'Bigelow.'" *Id.* The supreme court reversed the district court's decision to suppress the show-up. *Id.* at 162. The supreme court determined there was "little, if any, danger that the show-up procedure influenced" the identification; therefore, it was not "unnecessarily suggestive." *Id.*

There are many parallels between the show-up in this case and the one conducted in *Taylor*. Like the eyewitness in *Taylor*, D.D. recognized the shooter. D.D. did not know the shooter's name but knew him as sister's boyfriend, while the eyewitness in *Taylor* knew

the assailant only by his nickname, "Bigelow." *See id.* at 160. Thus, just as the supreme court concluded in *Taylor*, we conclude here that the police did not select Stringer "from the general population based on a [physical] description given to them by a victim, and then proceed[] to present him to the victim, in handcuffs, for identification in a one-person show-up." *See id.* at 162. Rather, like the eyewitness in *Taylor*, D.D. singled out Stringer as sister's boyfriend, whom she recognized from previous encounters. *See id.* (reasoning that the eyewitness singled out Bigelow by his nickname and based on previous interactions).

In one key respect, the show-up procedure used here has stronger facts than those in *Taylor*. In *Taylor*, police arrested the suspect and brought him to the victim's duplex. *Id.* at 160. But here, Stringer returned to the apartment complex shortly after the shooting occurred in the white, four-door SUV's front passenger seat, as described by D.D., with sister as the driver, also as described by D.D. The district court correctly reasoned this evidence supports "a logical conclusion that [Stringer] might have been the individual in the passenger seat who, one hour and seven minutes before, fired three gun shots into the building." Thus, as stated by the district court, Stringer "was not unfairly singled out" because he "was not a random person arrested merely because of the physical description provided by D.D."

As in *Taylor*, Stringer was removed from the squad car in handcuffs so the witness could safely view him from a second-floor window. While the use of handcuffs and removal from the squad car are suggestive, the transcript from the body-camera recording of the show-up establishes that the officer who spoke to D.D. during the identification did

not impermissibly suggest to D.D. who the shooter was. The officer told D.D. they would pull "them" out of the car and would not tell them to look at D.D.'s apartment window. The officer then asked, "is he shooting or what?" D.D. identified Stringer as "the one who shot the gun."

Stringer complains the police should have used different procedures in the show-up identification or used a photographic or in-person line-up.[1] But the procedures used here were reasonable under the circumstances for three reasons. First, if D.D. said Stringer was not the shooter during the show-up identification, or was unsure of her identification, then police could have released Stringer. The supreme court in *Taylor* similarly commented that, had the suspect "been the wrong 'Bigelow,' the police would have been in the position to release him from custody without delay." *Id.* at 162. Second, the police reasonably sought to quickly determine whether they had the shooter in custody or, if not, whether they needed to continue to search for the shooter. Finally, the police testified D.D. remained in the apartment "at her behest because of fear of her safety."[2]

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[1] Stringer cites an advisory committee report recommending police identification procedures should "minimize[e] the impact of the suspect's detention (e.g., no handcuffs and removing suspect from squad car) during the show-up." Report of the Minnesota Supreme Court Rules of Evidence Advisory Committee, ADM10-8047, at p.5 (Oct. 1, 2018). But the committee report added the police should follow these recommendations "when feasible." *Id.* For the reasons discussed in this opinion, we conclude the identification procedures used were not unnecessarily suggestive.

[2] The record does not reveal whether police read D.D. an advisory before conducting the show-up identification, even though it is best practice to do so. Because we have no record on this issue, we reject Stringer's claim that D.D. "was not read an advisory."

For these reasons, we conclude that although the show-up procedure was suggestive, it was not unnecessarily or impermissibly suggestive.

### B. The show-up identification did not create a very substantial likelihood of irreparable misidentification.

Alternatively, even if we assume the show-up procedure was unnecessarily suggestive, the district court did not err because the "totality of the circumstances" shows D.D.'s identification of Stringer had "adequate independent origin" and did not create "a very substantial likelihood of irreparable misidentification." *Ostrem*, 535 N.W.2d at 921. To determine the "totality of the circumstances," Minnesota courts use "the five factors articulated by the United States Supreme Court," often called the *Bellcourt* factors, based on Minnesota caselaw. *Id.* These 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 [identification];
> 5. The time between the crime and the confrontation.

*Id.* (citing *State v. Bellcourt*, 251 N.W.2d 631, 633 (Minn. 1977)).

The *Bellcourt* factors were applied in *Ostrem*, where the supreme court presumed the photo line-up identification procedure was unnecessarily suggestive, and then affirmed the district court's decision to allow the evidence. *Id.* at 921–22. In *Ostrem*, the eyewitness was in his car while he spoke with "two men standing on the front deck of [his parents'] house" at about 8:45 a.m. *Id.* at 918. After his parents discovered money missing from their safe, the eyewitness described both men to police, including body type, hair, clothing, and

even shoestring color. *Id.* Two days later at the police station, the eyewitness "saw the photo of Ostrem" sitting on a desk and, unprompted, identified him as one of the two men. *Id.* at 919. On appeal from Ostrem's conviction, the supreme court affirmed the district court's decision to allow the identification evidence. *Id.* at 921–22. The supreme court analyzed the identification evidence using the five-factor test and determined the "totality of the circumstances" showed the eyewitness's identification had "adequate independent origin" and did not create "a very substantial likelihood of irreparable misidentification." *Id.*

Here, we also consider each of the *Bellcourt* factors in light of the supreme court's analysis in *Ostrem*.

**1. D.D.'s opportunity to view the shooter**

D.D.'s opportunity to view the shooter was similar to that of the eyewitness in *Ostrem*. Both eyewitnesses observed the suspects during daylight and "from relatively close range." *See id.* at 922. D.D. had a clear view of the group, including the shooter, from close proximity during daylight for several minutes. Thus, we agree with the district court that "D.D. had sufficient opportunity" to see Stringer, and this factor favors reliability of the evidence.

**2. D.D.'s degree of attention**

D.D.'s degree of attention was similar to that of the eyewitness in *Ostrem*, where the eyewitness spoke with a different man for a few minutes while watching the defendant but was still able to observe the defendant. *Id.* Similarly, most of D.D.'s interaction was

with M.B., but she was still able to focus on the others in the group, including Stringer, during their exchange at the window.

Stringer asserts that a television, D.D.'s napping child, and her search for a phone interrupted D.D.'s attention. But D.D. recalled details about M.B. leaving the SUV with her child and where each person sat in the SUV, as well as the actual shooting. And as the district court found, D.D's "minor child was sleeping and [D.D.] was focused on [Stringer] and the other individuals as they were engaging in an argument with D.D."

Most of D.D.'s observations of the group occurred before the shooting, therefore, any stress from the shooting did not affect D.D.'s degree of attention. D.D. maintained her attention during the shooting and accurately told police about the shooter's location, which led to the discovery of the shell casings. Thus, this factor favors reliability of the evidence.

**3. Accuracy of D.D.'s description**

The third factor—accuracy of D.D.'s description—is also comparable to *Ostrem*. The eyewitness in *Ostrem* provided investigators with accurate hair length, clothing, accessories, and even shoestring color. *Id.* at 918. D.D. also accurately described Stringer's build, unique hairstyle, and clothing. Stringer argues that D.D.'s inaccurate description of the shooter's pants is significant. We disagree. As the district court noted, "[t]his minor discrepancy does not render the entire description inaccurate." At the very least, as Stringer acknowledges in his brief, this factor is neutral at best.

**4. D.D.'s level of certainty**

In *Ostrem*, the eyewitness was certain in his identification, which "was instantaneous and unprovoked." *Id.* at 922. Similarly, upon seeing Stringer exit the car,

D.D. immediately identified him as the individual who fired the shots "for sure." The district court found that "the immediacy of her statement indicates that D.D. was certain about [Stringer's] identity."

Stringer cites social-science articles and opinions from other jurisdictions discussing the unreliability of eyewitness certainty. *See, e.g.*, Steven D. Penrod & Brian L. Cutler, *Improving the Reliability of Eyewitness Identification*, 2 J. Psych. 281–90 (1998); *State v. Lawson*, 291 P.3d 673, 688 (Or. 2012). In any event, the Minnesota Supreme Court uses an eyewitness's certainty as a factor. *Ostrem*, 535 N.W.2d at 921–922. And the Minnesota Supreme Court Rules of Evidence Advisory Committee recommends using "the witness's level of certainty" when evaluating reliability, "particularly if the certainty statement is made close in time to the crime," as it was here. Report of the Minnesota Supreme Court Rules of Evidence Advisory Committee, ADM10-8047, at p.16 (Oct. 1, 2018). In short, nothing in the record or Minnesota caselaw diminishes the district court's determination that D.D. was certain in her identification of the shooter, so this factor favors reliability of the evidence.

**5. Time between the crime and confrontation**

The time between the shooting and D.D.'s show-up identification is shorter here than for the eyewitness in *Ostrem*. In *Ostrem*, the eyewitness identified the suspect two days after the incident. *Id.* at 922. Here, D.D. identified Stringer one hour and seven minutes after the shooting, which favors reliability of the evidence.

To sum up: Under the totality of the circumstances, four of the *Bellcourt* factors support D.D.'s identification of Stringer as reliable. The remaining factor—accuracy—is

at least neutral. We therefore conclude, even if we assume the show-up procedure was unnecessarily suggestive, the totality of the circumstances favors an independent and reliable origin for D.D.'s identification of Stringer, and the district court did not prejudicially err in admitting this evidence.

## II. The evidence is sufficient to sustain Stringer's convictions.

Stringer argues the state failed to prove the shooter's identity beyond a reasonable doubt. The state contends the record evidence is sufficient to prove Stringer is the shooter because D.D.'s identification evidence is reliable. The state also argues questions of credibility are within the exclusive province of the jury, citing *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980).

The due-process guarantees in the state and federal constitutions "require[] the state to prove each element of the crime charged beyond a reasonable doubt." *State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1988) (citing *In re Winship*, 397 U.S. 358, 364 (1970)). When reviewing the sufficiency of the evidence, appellate courts determine "whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). "The verdict will not be overturned if the fact-finder . . . could reasonably have found the defendant guilty of the charged offense." *Griffin*, 887 N.W.2d at 263.

Testimony by a single eyewitness may be sufficient to sustain a conviction. *State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010). Still, when the appellant challenges the sufficiency of identity evidence, "[t]he trustworthiness of an identification must necessarily be judged by the opportunity the witness has had for a deliberate and accurate observation of the accused." *State v. Gluff*, 172 N.W.2d 63, 65 (Minn. 1969). The five factors in assessing identification by an eyewitness, called the *Burch* factors, are similar to the *Bellcourt* factors:

> [1] the opportunity of the witness to see the defendant at the time the crime was committed, [2] the length of time the person committing the crime was in the witness' view, [3] the stress the witness was under at the time, [4] the lapse of time between the crime and the identification, and [5] the effect of the procedures followed by the police as either testing the identification or simply reinforcing the witness' initial determination that the defendant is the one who committed the crime.

*State v. Burch*, 170 N.W.2d 543, 553–54 (Minn. 1969).

The state points out that the jury received the pattern jury instruction on the *Burch* factors. *See* 10 *Minn. Practice*, CRIMJIG 3.19, cmt (2015) (summarizing the *Burch* factors and recommending consideration of the instruction where the "circumstances raise any possible doubt in the court's mind as to the reliability of the identification"). Stringer does not challenge the district court's use of the pattern jury instruction.

In *Burch*, the Minnesota Supreme Court held that courts should instruct the jury on all *Burch* factors when evaluating an identification. *See Burch*, 170 N.W.2d at 553; *see also State v. Bishop*, 183 N.W.2d 536, 540 (Minn. 1971) (directing that juries should be instructed on the *Burch* factors where identification is at issue). Here, the district court met

this requirement. As a result, we next consider each *Burch* factor to determine whether D.D.'s show-up identification evidence sufficiently supports Stringer's convictions.

**A. Opportunity and length of time**

We consider the first and second *Burch* factors together. Stringer contends single-eyewitness identification is insufficient when based on "fleeting or limited observation," citing *State v. Spann*, 287 N.W.2d 406, 407–408 (Minn. 1979) (noting that "fleeting or limited observation" is not sufficiently reliable). Stringer also argues D.D.'s identification of Stringer is unreliable because her opportunity to see and accurately remember was limited by "shortness of time, lack of focus, and distance." The state maintains D.D.'s identification of Stringer was neither fleeting nor limited.

Stringer accurately points out that D.D. witnessed the incident from the second floor and not face-to-face. Still, the shooting occurred in the middle of the day, and D.D.'s view of the group, including Stringer, was unobstructed and lasted for several minutes before the shooting. *See State v. Capers*, 451 N.W.2d 367, 370 (Minn. App. 1990) (determining that a clear view in daylight hours established reliability of eyewitness identification). Indeed, how long D.D. had to observe Stringer supports the reliability of the identification evidence. The actual shooting took place in a few seconds, but D.D.'s observations before the shooting were five to ten minutes long. This amount of time allowed the jury to conclude D.D. had sufficient time to identify Stringer. *See State v. Thompson*, 414 N.W.2d 580, 583 (Minn. App. 1987) (determining 10 to 13 seconds was enough time for identification).

Stringer next emphasizes that the television, the sleeping child, and D.D.'s attempt to find a phone could have been distractions. *See Gluff*, 172 N.W.2d at 65 (distinguishing between focused and distracted observations). These claimed distractions do not equate to a "fleeting or limited observation." *See Spann*, 287 N.W.2d at 407. Also, Stringer's attorneys raised the distractions that D.D. encountered to the jury, which was properly instructed, and its verdict suggests it found D.D.'s identification credible.

**B. Stress**

Stringer argues the stress of the situation decreased D.D.'s "ability to make an accurate identification." We disagree. While the situation was stressful, this *Burch* factor assesses whether stress "affected the accuracy" of the identification. *State v. Mesich*, 396 N.W.2d 46, 51 (Minn. App. 1986). As the state points out, when a witness testifies to important details, then we may conclude the stress did not affect the accuracy of the identification. *See Capers*, 451 N.W.2d at 370. Here, D.D. accurately testified to many important details, such as Stringer's hairstyle, where he was seated in the SUV, and the location of the shooter. Also, for the majority of D.D.'s observations that day, D.D.'s stress level was likely not elevated because there was no indication of a gun or other violence. *See State v. McAdory*, 543 N.W.2d 692, 696 (Minn. App. 1996) (stating observations before a shooting are not, by themselves, stressful).

**C. Lapse of time**

Stringer concedes the period between the crime and D.D.'s identification of Stringer "may not be an extended period of time." Indeed, the lapse of time was uniquely short. The identification took place a mere hour and seven minutes after the incident. This factor

favors the reliability of D.D.'s identification. *See State v. Givens*, 356 N.W.2d 58, 63 (Minn. App. 1984) (determining a single-witness identification three days after a robbery was sufficient).

**D. Police procedures**

Stringer argues the show-up procedure used by the police undermined D.D.'s reliability. The state responds that nothing in the record suggests that the police acted impermissibly. We agree with the state. As discussed above, while the show-up procedure was suggestive, it was not unnecessarily suggestive. Also, the police had several legitimate reasons to conduct an immediate identification when Stringer returned to the scene, and D.D. was available to view him from the same place she had earlier seen the shooter.

In short, all five *Burch* factors favor of the reliability of D.D.'s identification of Stringer, despite a vigorous challenge by the defense during the jury trial, and despite D.D.'s equivocal trial testimony about her earlier positive identification of Stringer. We conclude the record evidence supports the jury's decision to credit D.D.'s identification of Stringer as the shooter.

Stringer finally argues that we should reject the sufficiency of the evidence because there was no evidence corroborating D.D.'s identification of Stringer as the shooter. *See Gluff*, 172 N.W.2d at 65–66 (reversing conviction and remanding for new trial where "there was no evidence whatever to corroborate defendant's implication in the crime" other than eyewitness's "selection of a photograph from a police file"). But the reliability of the single-eyewitness identification in *Gluff* differs from the reliability of D.D.'s identification of Stringer. In *Gluff*, the "uncorroborated identification of the defendant did not have

probative value because the witness had seen the perpetrator for only a short time and there had been errors in the lineup process." *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004).

Unlike the identification in *Gluff*, D.D. recognized Stringer from earlier encounters, had sufficient opportunity and time to view him on the day of the shooting, and the show-up procedure was not unnecessarily suggestive. But the state's evidence is different from *Gluff* in another respect: the jury's conviction did not rest solely on the show-up identification because the state provided other corroborating evidence. At trial, D.D. testified she recognized Stringer as sister's boyfriend and knew sister as someone who fought with A.G. in the past. D.D. also testified Stringer was in the front passenger seat of the SUV, which is where she told police the shots were fired. While no gun was recovered, police found two bullet casings where D.D. said the shooter was located. D.D. gave police a detailed description of sister's boyfriend and the SUV, and her description matched the man and the vehicle that returned to the scene about one hour after the shooting.[3]

Based on the *Burch* factors and the lack of any unnecessary suggestiveness in the show-up procedure, we conclude that D.D.'s identification of Stringer was sufficient to

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[3] The state makes a strong argument that any error in admitting D.D.'s testimony about the show-up was harmless because D.D. independently identified Stringer as the shooter during the evidentiary hearing. Stringer contends that D.D.'s in-court identification was tainted. Because we conclude the show-up identification is reliable evidence and the show-up procedure was not unnecessarily suggestive, we doubt the in-court identification was tainted. But because the evidence is sufficient to sustain Stringer's convictions without considering the in-court identification, we need not discuss this issue further.

sustain Stringer's convictions of drive-by shooting and unlawful possession of a firearm. Thus, we affirm the judgments of conviction.

**Affirmed.**