

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

SUPREME COURT
No. 156189

COURT OF APPEALS
No. 332190

v

TRAVIS TRAVON SAMMONS,
Defendant-Appellant.

LOWER COURT
No. 15-041848-FC

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PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF
(ORAL ARGUMENT REQUESTED)

TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES.....	i
STATEMENT OF JURISDICTION.....	iii
COUNTERSTATEMENT OF QUESTIONS INVOLVED.....	iv
KEY TO ABBREVIATIONS.....	v
COUNTERSTATEMENT OF FACTS	1
ARGUMENTS	
I. The show-up identification procedure was not impermissibly suggestive.....	5
II. The identification was sufficiently reliable so that it was properly admitted	9
III. The admission of Jones’s out-of-court identification was harmless.....	13
SUMMARY AND RELIEF SOUGHT	16

INDEX OF AUTHORITIES

<u>CASES:</u>	<u>PAGE:</u>
<i>Foster v California</i> , 394 US 440, 443; 89 S Ct 1127 (1969).....	5
<i>Manson v Brathwaite</i> , 432 US 98, 112-114; 97 S Ct 2243 (1977).....	5, 9, 12
<i>Neil v Biggers</i> , 409 US 188, 196; 93 S Ct 375 (1972).....	5
<i>People v Gray</i> , 457 Mich 107, 111, 113; 577 NW2d 92 (1998)	5, 7, 14
<i>People v Jenkins</i> , 472 Mich 26, 31; 691 NW2d 759 (2005).....	4
<i>People v Johnson</i> , 59 Mich App 187; 229 NW2d 372 (1975).....	5
<i>People v Keller</i> , 479 Mich 467, 473-474; 739 NW2d 505 (2007)	4
<i>People v Kosik</i> , 303 Mich App 146, 150; 841 NW2d 906 (2013).....	15
<i>People v Kurylczyk</i> , 443 Mich 289, 302, 303, 306, 315; 505 NW2d 528 (1993)	4, 5, 7, 9, 13
<i>People v Purofoy</i> , 116 Mich App 471; 323 NW2d 446 (1982)	5
<i>Perry v New Hampshire</i> , 565 US 228, 239, 245; 132 S Ct 716 (2012).....	9, 11, 13
<i>Watkins v Sowders</i> , 449 US 341, 347; 101 S Ct 654 (1981)	11, 15

STATUTES AND OTHER AUTHORITIES:

PAGE:

MCR 2.613(A)..... 13

STATEMENT OF JURISDICTION

Plaintiff-Appellee hereby incorporates Defendant-Appellant's Statement of Jurisdiction.

COUNTERSTATEMENT OF QUESTIONS INVOLVED

- I. Approximately four to five hours after two homicide suspects were arrested, a law enforcement officer asked a witness, Dyjuan Jones, to walk down the hallway of the police station and look into two interview rooms, each containing one suspect, to see if Jones recognized either of the individuals. The suspects were wearing street clothes, were not handcuffed or restrained in any way, and law enforcement did not make any suggestion that the suspects were involved in a criminal investigation. **Was the show-up identification procedure impermissibly suggestive?**

Defendant-Appellant says "YES".
Plaintiff-Appellee says "NO".
The Saginaw County Circuit Court says "NO".
The Court of Appeals says "NO".

- II. **If the show-up identification procedure was impermissibly suggestive, was the identification sufficiently reliable so that it was properly admitted?**

Defendant-Appellant says "NO".
Plaintiff-Appellee says "YES".
The Saginaw County Circuit Court says "YES".
The Court of Appeals says "YES".

- III. **If the identification was improperly admitted, is it more probable than not that the erroneous admission of the identification through the detective's testimony affected the outcome of the trial?**

Defendant-Appellant says "YES".
Plaintiff-Appellee says "NO".
The Saginaw County Circuit Court did not address this question.
The Court of Appeals did not address this question.

KEY TO ABBREVIATIONS

The People of the State of Michigan utilize the following abbreviations in response to Defendant-Appellant's Supplemental Brief:

PE Trans, Vol I: Preliminary Examination Transcript from September 25, 2015

PE Trans, Vol II: Preliminary Examination Transcript from October 26, 2015

Tr Trans, Vol II: Trial Transcript from January 21, 2016

Tr Trans, Vol III: Trial Transcript from January 26, 2016

COUNTERSTATEMENT OF FACTS

On June 21, 2015, Humberto Casas was murdered. At approximately 1:30 p.m. on that date, 16-year-old Dyjuan Jones (“Jones”) and his mother, Felicia Little, were traveling north on Cumberland Street, approaching the intersection at Holland Road, the location where Casas was murdered. (Tr Trans, Vol II at 152: 1-7, App 8b). Jones heard a noise that sounded like firecrackers. (PE Trans, Vol I at 20: 24, Defendant-Appellant’s App 7a; TR Trans, Vol II at 118:16, Defendant-Appellant’s App 35a). Jones, who was riding behind the passenger seat in his mother’s vehicle, observed a light gray Jeep at the scene of the murder. (PE Trans, Vol I at 21: 13-14, Defendant-Appellant’s App 8a). Jones also observed an African-American male in the driver’s seat of the Jeep and a second African-American male outside of the vehicle. (PE Trans, Vol I at 22: 6-15, Defendant-Appellant’s App 9a). Both men were wearing white shirts. (PE Trans, Vol I at 22, Defendant-Appellant’s App 9a). Jones indicated that he observed the individual outside the vehicle with a gun, and saw him shoot the victim three times. (Tr Trans, Vol II at 122: 2, Defendant-Appellant’s App 36a). The gun jammed, but about five seconds later, the gunman fired several more shots at the victim. (Tr Trans, Vol II at 122: 19, Defendant-Appellant’s App 36a). The Jeep then sped away at a high rate of speed. (PE Trans, Vol I at 24: 10-11, Defendant-Appellant’s App 12a). Importantly, Jones testified that he was only about 20 to 25 feet away from the shooting, and that there was nothing obstructing his view. (Tr Trans, Vol II at 134: 20-25, App 3b).

Jones and his mother fled the scene, then returned so Ms. Little could provide medical assistance to the victim. (Tr Trans, Vol II at 158: 5-11, App 9b). Ms. Little and Jones remained on the scene for approximately 30 minutes to an hour. (Tr Trans, Vol II at 127: 6-8, App 2b). Jones spoke to officers on the scene, and he described the driver as a heavysset male, 280 to 320 pounds, with a long beard. (Tr Trans Vol II at 136: 2-3; 138: 2-6, Defendant-Appellant’s App 38a). Jones

identified the shooter as being a black male, wearing black cargo pants and having a shaved head. (Tr Trans Vol II at 142: 1-5, Defendant-Appellant's App 39a).

Approximately 11 minutes after the shooting occurred, Bridgeport Township Police Officer Tyler Poirier initiated a traffic stop on a silver Jeep matching the description of the one at the scene of the murder near the intersection of Dixie Highway and Gretchen Street. (Tr Trans, Vol II at 50: 13, Defendant-Appellant's App 31a; 57: 13-17, Defendant-Appellant's App 33a). Officer Poirier determined that Defendant-Appellant, Travis Sammons ("Sammons"), was the passenger; co-defendant, Dominique Ramsey ("Ramsey"), was the driver. (Tr Trans Vol II at 50-51, Defendant-Appellant's App 31a). When Officer Poirier patted Sammons down, he noticed that Sammons's hands were "sweating heavily," which Officer Poirier found to be unusual. (Tr Trans, Vol II at 54: 11-12, Defendant-Appellant's App 32a). Upon completion of the traffic stop, Sammons and Ramsey were transported to the Saginaw Police Department. (PE Trans, Vol I at 58-59, App 15b and 16b).

At approximately 4:00 or 5:00 that afternoon, David Rivard, a Michigan State Police Detective Sergeant, arranged a show-up at the police department to determine if Jones could identify Sammons or Ramsey. Detective Rivard asked Jones to walk down the hallway and look into interview room two, where Sammons was sitting, and interview room three, where Ramsey was sitting, to see if he recognized anyone. (Tr Trans, Vol III at 42: 8-9, Defendant-Appellant's App 48a; 44: 23-25, Defendant-Appellant's App 49a; 45: 1-2, Defendant-Appellant's App 49a). Sammons and Ramsey were wearing the street clothes that they were brought in with, and they were not handcuffed or restrained in any way. (Tr Trans, Vol III at 43: 2-14, Defendant-Appellant's App 48a).

Detective Rivard testified that Jones identified the man in interview room two, Sammons, as the shooter, but he did not identify the suspect in interview room three, Ramsey. (Tr Trans, Vol III at 46: 24-25, Defendant-Appellant's App 49a; 49: 18-20, App 12b). Detective Rivard indicated, and Jones confirmed, that Detective Rivard did not tell Jones that he had to make an identification of any individual, nor did he tell Jones that it was important for him to do so. (Tr Trans, Vol II at 130: 10-15, Defendant-Appellant's App 37a; Tr Trans Vol III at 45: 4-15, Defendant-Appellant's App 49a).

In the days after the homicide, Detective Trooper Robert Scott visited several businesses between the scene of the crime and the location of the traffic stop to obtain surveillance videos from June 21, 2015. (PE Trans, Vol II at 94-95, App 19b and 20b). In total, Trooper Scoot obtained ten surveillance videos from different locations along this route which all showed a silver Jeep Commander, matching the description of the suspects' vehicle, traveling along the roadway. (PE Trans, Vol II at 95, App 20b; 100-102, App 21b and 22b). Detective Rivard also interviewed Sammons at the police station on the day of the homicide. Sammons testified that the Jeep Commander in which they were riding on June 21, 2015 belonged to Ramsey's girlfriend. (Tr Trans, Vol III at 37: 7, Defendant-Appellant's App 47a). Sammons indicated that he was the passenger in the jeep, and that Ramsey was the driver. (Tr Trans, Vol III at 38: 22, 39: 1, Defendant-Appellant's App 47a). Sammons also stated that Ramsey picked him up around 10:30 or 11:00 in the morning on the day of the murder, that the two of them drove around Saginaw until they were stopped by the police, and that they went to Birch Park at some point between the time that Ramsey picked him up and the time that they were stopped. (Tr Trans, Vol III at 39: 5-10, Defendant-Appellant's App 47a). Interestingly, Sammons's statement regarding their whereabouts on the day that the homicide occurred did not match the route depicted in Trooper Scott's compiled

CD, as the CD did not indicate that Sammons and Ramsey made a stop at Birch Park.

Jones did not identify Sammons at the preliminary examination or at trial. Furthermore, he denied having identified Sammons as the shooter at the police department show-up. (Tr Trans Vol II at 130: 23-25, Defendant-Appellant's App 37a).

At trial, Sammons's counsel objected to the admission of Detective Rivard's testimony regarding Jones's identification, and filed a motion to suppress the identification on the grounds that the procedure used was impermissibly suggestive. On January 15, 2016, the trial court issued an opinion and order denying the motion to suppress. (Defendant-Appellant's App 50a). On January 27, 2016, Sammons was found guilty of conspiracy to commit murder. Sammons moved for judgment notwithstanding the verdict, which was denied. On July 6, 2017, the Court of Appeals affirmed Sammons's conviction, finding, among other things, that the show-up identification procedure was not unnecessarily suggestive, and that the trial court did not clearly err in denying Sammons's motion to suppress Jones's identification. (See COA Op, Defendant-Appellant's App 61a).

STANDARD OF REVIEW

"On review, the trial court's decision to admit identification evidence will not be reversed unless it is clearly erroneous." *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.* The Court reviews the trial court's findings of fact for clear error, *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005), and its rulings on questions of law, including constitutional issues, do novo, *People v Keller*, 479 Mich 467, 473-474; 739 NW2d 505 (2007).

ARGUMENT I

The show-up identification procedure was not impermissibly suggestive.

A “showup” is defined as “a police procedure in which a suspect is shown singly to a witness for identification, rather than as part of a lineup.” *Black’s Law Dictionary* (10th ed.), p 1591. The jurisprudence of this state indicates that show-ups are still considered to be reasonable police practices in some instances. See *People v Johnson*, 59 Mich App 187; 229 NW2d 372 (1975); See also *People v Purofoy*, 116 Mich App 471; 323 NW2d 446 (1982). The due process clause requires the exclusion of an eyewitness identification obtained through police-arranged procedures that make it all but inevitable that the witness would identify the suspect. *Foster v California*, 394 US 440, 443; 89 S Ct 1127 (1969).

In order to sustain his due process challenge, Sammons must show that “the pretrial identification procedure was so suggestive in light of the totality of the circumstances that it led to a substantial likelihood of misidentification.” *Kurylczyk*, 443 Mich at 302, citing *Neil v Biggers*, 409 US 188, 196; 93 S Ct 375 (1972). When examining the totality of the circumstances, courts will consider “the opportunity for the witness to view the criminal at the time of the crime, the witness’ degree of attention, the accuracy of a prior description, the witness’ level of certainty at the pretrial identification procedure, and the length of time between the crime and the confrontation.” *Manson v Brathwaite*, 432 US 98, 114; 97 S Ct 2243 (1977). An identification procedure can be unduly suggestive when a witness is led to believe that the police have apprehended the right person, where the witness is shown only one person, or where the person shown is part of a group in which he or she is singled out. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998).

Here, Sammons was not shown “singly to a witness.” Rather, Sammons was sitting in interview room number two, while Ramsey was sitting in interview room number three. Sammons and Ramsey were wearing the street clothes that they were brought in with, and they were not handcuffed or restrained in any way. Detective Rivard asked Jones to walk down the hallway past the interview rooms, look into the rooms, see if he recognized anyone, and if so, explain how he knew them. Detective Rivard indicated, and Jones confirmed, that Detective Rivard did not tell Jones that he had to make an identification of any individual, nor did he tell Jones that it was important for him to do so. Detective Rivard did not suggest in any way that either of the men were involved in an ongoing criminal investigation, or that he had any knowledge regarding the defendants’ involvement in any criminal activity.

Detective Rivard testified that Jones walked down the hallway, looked into each of the interview rooms, and indicated that the individual in interview room two, Sammons, was the shooter. However, Jones did not make an identification of Ramsey. The fact that Jones identified Sammons as the gunman, but did not identify Ramsey, indicates that Jones was relying on his memory of the crime. It also shows that the procedure was not so suggestive as to compel Jones to identify the defendants. Jones was well aware that there were two individuals at the scene of the crime. If the show-up procedure was so suggestive, as Sammons maintains, Jones would have deduced that one of the individuals in the interview rooms was the shooter, and that the other was the driver. However, he did not.

Importantly, the identification occurred within hours of the homicide, while the details of the crime, and the physical attributes of the perpetrators, were still fresh in Jones’s mind. Detective Rivard explained that at the time of the show-up, there was an “ongoing, instantaneous investigation” regarding a homicide that involved two suspects, and that the investigation was

moving quickly due to the serious nature of the crime. (Tr Trans, Vol III at 43: 24-25, Defendant-Appellant's App 48a; 44: 1-4, Defendant-Appellant's App 49a). Detective Rivard explained that the police were trying to determine whether the investigation was headed in the right direction, and, importantly, whether or not the individuals who were detained were, in fact, possible suspects. (Tr Trans, Vol III at 44: 5-7 and 14-20; Defendant-Appellant's App 49a).

In *Johnson, supra*, the Court of Appeals held that an in-the-field identification was not so suggestive as to deny the defendant due process and his right to a fair trial. The Court held that, “[w]hile . . . there may be some element of suggestiveness where a suspect is viewed alone in an ‘in-the-field’ identification proceeding . . . such an identification procedure is a reasonable police practice.” *Id.* at 190. The Court reasoned that “this type of identification proceeding allows confirmation or denial of an identification while the memory of a witness is still fresh and accurate.” *Id.* Accordingly, an identification procedure that bears “some element of suggestiveness” does not amount to an identification procedure that was “so suggestive in light of the totality of the circumstances that it led to a substantial likelihood of misidentification,” *Kurylczyk*, 443 Mich at 302, nor is it tantamount to one that is “unduly suggestive,” as contemplated in *Gray*, 457 Mich at 111.

Overall, given the totality of the circumstances, the identification procedure used here was not so suggestive that it led to a substantial likelihood of misidentification. Jones was approximately 20 to 25 feet away from the shooting, and although he was sitting in the back seat of his mother's vehicle, Jones testified that there was nothing obstructing his view. The identification occurred within hours of the homicide, while the details of the crime, and the physical attributes of the perpetrators, were still fresh in Jones's mind. Although at the preliminary examination and at trial Jones denied having identified Sammons at the police station show-up, he

did admit that Sammons had “similarities” to, and shared common features with, the shooter. (Tr Trans, Vol II at 146: 13-14, Defendant-Appellant’s App 40a).

Law enforcement did not make any suggestion to Jones that the individuals in the interview rooms were involved in a criminal investigation, nor did law enforcement even mention the shooting that had occurred earlier that day. Detective Rivard simply asked Jones to walk down a hallway to see if he recognized anyone. This procedure cannot be interpreted as unduly or impermissibly suggestive.

ARGUMENT II

The identification was sufficiently reliable so that it was properly admitted.

Plaintiff-Appellee maintains that the show-up identification procedure at issue here was not impermissibly suggestive. However, if this Court finds that the show-up identification procedure was impermissibly suggestive, Plaintiff-Appellee argues that the identification was sufficiently reliable so that it was properly admitted at trial.

The fact that a procedure is suggestive does not necessarily render it constitutionally defective. *Kurylczyk*, 443 Mich at 306. In fact, the United States Supreme Court has held that even when the police use an identification procedure that is both suggestive and unnecessary, suppression of the resulting identification is not the inevitable consequence. *Perry v New Hampshire*, 565 US 228, 239; 132 S Ct 716 (2012), citing *Brathwaite*, 432 US at 112-113. Instead, due process “requires courts to assess, on a case-by-case basis, whether improper police conduct created a ‘substantial likelihood of misidentification.’” *Id.*

Detective Rivard testified that, at the time of the show-up, Sammons and Ramsey were wearing the street clothes that they were brought in with, and they were not handcuffed or restrained in any way. Detective Rivard testified, and Jones confirmed, that Detective Rivard did not tell Jones that he had to make an identification of any individual, nor did he tell Jones that it was important for him to do so. Detective Rivard did not suggest in any way that either of the men were involved in an ongoing criminal investigation, or that he had any knowledge regarding the defendants’ involvement in any criminal activity.

The fact that Jones identified Sammons as the gunman, but did not identify Ramsey, indicates that he was relying on his memory of the crime and was not influenced by any suggestiveness that the procedure may have had. Again, Jones was well aware that there were two

individuals at the scene of the crime: he was there. If the show-up procedure was so suggestive, as Sammons maintains, Jones would have deduced that one of the individuals in the interview rooms was the shooter, and that the other was the driver. Upon identifying the suspect in interview room number two, Sammons, as the shooter, he very well could have determined that the suspect in interview room number three, Ramsey, must be the driver. However, he did not. Therefore, Jones resisted any suggestiveness that may have been inherent in the show-up identification procedure.

Moreover, other circumstantial evidence linked Sammons to the crime apart from Detective Rivard's testimony regarding Jones's identification. For example, in the days after the homicide, Detective Trooper Robert Scott visited about ten businesses between the scene of the crime and the location of the traffic stop to obtain surveillance videos from June 21, 2015. The surveillance videos placed Sammons at or near the scene of the crime, and refuted Sammons's statement to Detective Rivard that he and Ramsey were at Birch Park at some point between the time of the murder and their arrest.

Second, although Defendant-Appellant makes much of the description that Jones gave to the officers on the scene, Ms. Little's and Rosei Watkins's testimony corroborates Jones's identification. Jones told the officers that he saw a gray vehicle at the scene of the crime. Jones identified the shooter as being a black male, with a shaved head, wearing black cargo pants and a white shirt. Jones described the driver as a heavyset African-American male, 280-320 pounds, with a long beard. To the contrary, Ramsey weighed approximately 150 pounds and did not have a beard. (PE Trans, Vol II at 84: 20-25, Defendant-Appellant's App 27a). Jones, however, did not see the driver get out of the jeep; he simply testified that he saw the driver leaning back in the car, but did not see his legs or waistline. (Tr Trans, Vol II at 148: 12-24, 7b). Ms. Watkins, who was a witness to the murder as well, testified that the shooter had very short cut hair, consistent with

Jones's description. (Tr Trans, Vol II at 175: 6, Defendant-Appellant's App 43a). Ms. Watkins also testified that she saw the driver, who had gotten out of the jeep, and stated he was not a tall man, that his build was in between/normal, that he did not weigh as much as 300-350 pounds, and that he did not have facial hair. (Tr Trans, Vol II at 167: 13 & 22-24, Defendant-Appellant's App 42a). Therefore, Ms. Watkins's description of the driver is more consistent with Ramsey's appearance, and it is no surprise that Jones did not identify Ramsey at the police station. However, this does not prove that Jones's identification of Sammons was not reliable. In fact, it bolsters the reliability of Jones's identification of Sammons because it shows, again, that Jones was relying upon his memory of the crime.

Ms. Watkins further testified that she saw a silver jeep, and she identified a picture of the vehicle that the suspects were pulled over in as the jeep that she saw at the scene of the crime. (Tr Trans, Vol II at 165:5-14, Defendant-Appellant's App 42a). In addition, Ms. Little testified that, while the shooting was taking place, she observed a gray vehicle, saw a gun, and heard shots being fired. (Tr Trans, Vol II at 155: 1-10, App 9b; 159: 7, App 10b). She also indicated that she was concerned about being seen by the shooter because "[t]hey usually shoot witnesses." (Tr Trans, Vol II at 160: 6, Defendant-Appellant's App 41a).

Overall, the identification was sufficiently reliable so that it was properly admitted at trial. Regardless, the question of reliability is one for the jury. "[T]he jury, not the judge, traditionally determines the reliability of evidence." *Perry*, 565 US at 245. "[T]he proper evaluation of evidence under the instructions of the trial judge is the very task our system must assume juries can perform. Indeed . . . the *only* duty of a jury in cases in which identification evidence has been admitted will often be to assess the reliability of that evidence," and it is the reliability of identification evidence that primarily determines its admissibility. *Watkins v Sowders*, 449 US 341, 347; 101 S Ct 654

(1981); *Brathwaite*, 432 US at 113-114.

ARGUMENT III

The admission of Jones's out-of-court identification was harmless.

If this Court finds that the show-up identification procedure was impermissibly suggestive, and that it was not sufficiently reliable such that it was improperly admitted at trial, Plaintiff-Appellee maintains that the erroneous admission of the out-of-court identification was harmless such that it did not affect the outcome of the trial.

Error in the admission of evidence is not grounds for setting aside a verdict “unless refusal to take this action appears to the court inconsistent with substantial justice.” MCR 2.613(A); *Kurylczyk*, 443 Mich at 315. However, “if it can be shown beyond a reasonable doubt that the testimony did not affect the jury’s verdict, then the erroneous admission of the testimony is considered to be harmless.” *Id.* at 315-316. Defendant-Appellant cites two studies in support of his argument that jurors are more likely to convict when they have eyewitness testimony, and that “jurors have a poor understanding of the factors that can undermine the reliability of eyewitness identification.” See Defendant-Appellant’s Supplemental Brief, pp 20-21. But those propositions completely ignore the precedent set by this Court, as well as that which has been set by the United States Supreme Court. The jury, not the judge, determines the reliability of evidence. *Perry*, 565 US at 245. Importantly, many safeguards are built into our adversary system that caution juries against placing undue weight on eyewitness testimony of questionable reliability. *Id.* Some of these safeguards include the defendant’s Sixth Amendment right to confront the eyewitness, the defendant’s right to the effective assistance of an attorney who can expose the flaws in the eyewitness’ testimony during cross-examination, eyewitness/identification jury instructions, and the constitutional requirement that the defendant’s guilt be proven beyond a reasonable doubt. *Id.* at 245-247.

The weaknesses of the identification evidence in this case were fully presented to the jury. This case did not involve a suggestive identification procedure followed by increasingly certain identifications by the witness where the newfound certainty may have resulted from the impermissibly suggestive procedure. See *Gray*, 457 Mich at 113. Instead, Jones candidly admitted the limited bases for his description at the scene and his inability to recognize Sammons at the preliminary examination and at trial. Defense counsel explored and emphasized the weakness of the identification evidence during cross examination and during closing arguments. Importantly, the following jury instruction was given regarding the identification at issue:

You have heard testimony from a witness, Sergeant David Rivard, that another witness, Dyjuan Jones, made a prior statement identifying Defendant Sammons as the shooter after he observed Defendant Sammons during a “show up” at the Saginaw Police Department on June 21, 2015.

Before you consider this out-of-court statement of identification, you must first find that Dyjuan Jones made the statement attributed to him by Sergeant Rivard.

If you find that Dyjuan Jones did make this out-of-court statement of identification, you may give this statement whatever weight you think it deserves. In deciding this, you should think about the totality of the circumstances under which the alleged statement of identification was made, and about all of the other evidence in this case.

(Jury Instruction p 12-B, App 24b).

Moreover, the following jury instruction was also given:

One of the issues in this case is the identification of the defendants as the individuals who committed the crimes. The prosecutor must prove beyond a reasonable doubt that the crimes were committed and that the defendants were the individuals who committed them.

In deciding how dependable an identification is, think about such things as how good a chance the witness had to see the offenders at the time, how long the witness was watching, whether the witness had seen or known the offenders before, how far away the witness was, whether the area was well-lighted, and the witness’s state of mind at that time.

Also, think about the circumstances at the time of the identification, such as how

much time had passed since the crime, how sure the witness was about the identification, and the witness's state of mind during the identification.

You may also consider any times that the witness failed to identify the defendants, or made an identification or gave a description that did not match the description of the defendants.

You should examine the witness's identification testimony carefully. You may consider whether other evidence supports the identification, because then it may be more reliable. However, you may use the identification testimony alone to convict the defendant, as long as you believe the testimony and you find that it proves beyond a reasonable doubt that the defendant was the person who committed the crime.

(Jury Instruction p 18, App 25b-26b).

“Where identification evidence is at issue . . . no . . . special considerations justify a departure from the presumption that juries will follow instructions.” *Sowers*, 449 US at 347. As mentioned above, trial courts must not interfere with the fact-finder's role of determining the weight of the evidence and credibility of witnesses. *People v Kosik*, 303 Mich App 146, 150; 841 NW2d 906 (2013). Here, the jury was free to believe Jones, or, on the other hand, Detective Rivard. If the jurors were not convinced by the other evidence identifying Sammons, they would not have been moved by the identification testimony of Jones which was discredited on cross-examination. Accordingly, if this Court finds that the identification testimony was improperly admitted, the erroneous admission of the out-of-court identification was harmless such that it did not affect the outcome of the trial.

SUMMARY AND RELIEF SOUGHT

Defendant-Appellant suggests that a finding by this Court that the show-up procedure employed in this case would be “tantamount to sanctioning this showup procedure as routine practice in police stations across the state.” See Defendant-Appellant’s Supplemental Brief, p 22. The People are not asking that this Court condone show-ups as a routine identification tool. Instead, the People urge the Court to follow the precedent of the United States Supreme Court, and the precedent of this state – not neighboring states, as suggested by Defendant-Appellant – and assess this case on a case-by-case basis, under the totality of the circumstances.

WHEREFORE, the People respectfully request that this Honorable Court affirm the holding of the Court of Appeals and find that the show-up identification procedure was not impermissibly suggestive. In the alternative, the People respectfully request that this Court find that the identification was nonetheless sufficiently reliable so that it was properly admitted, or, if improperly admitted, that it the identification testimony as given did not affect the outcome of the trial and was harmless.

Respectfully Submitted,

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