

IN THE DISTRICT COURT OF PAYNE COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
vs.)	CF-2011-75
)	
DARRELL WILLIAMS,)	
)	
Defendant.)	

MOTION TO SUPPRESS IDENTIFICATION

COMES NOW the Defendant, **DARRELL WILLIAMS**, and moves this Honorable Court to suppress the identification made in the above styled and numbered cause for the reason that the identification procedures were so suggestive and improper that the mistaken identification of Mr. Williams cannot be cured. Mr. Williams was denied due process of law.

~~██████████~~ testified at the preliminary hearing on March 30, 2011, that she did not know Mr. Williams prior to December 12, 2010. She further testified that she was not introduced to him. (TR 70) ~~██████████~~ was advised of his name later that evening. (TR 70)

The Stillwater Police Department showed ~~██████████~~ a photograph of the Oklahoma State University Basketball team in order to make an identification. The only two (2) people that she recognized were Mr. Williams and Marshall Moses. (TR 117 – 119) ~~██████████~~ also circled other players as well and placed question marks by two (2) other players that she could not identify. (TR 135 – 136) ~~██████████~~ was not shown any individual photographs of anyone. (TR 147)

Ms. ~~██████████~~ testified at the preliminary hearing that her identification and \$10.00 was missing from her pocket.

“Q. All right. You indicate you realized – what caused you to realize your ID and your \$10 was missing?

...

A. I tried to think of where it could be, and then I approached Darrell Williams to see if he might of taken it.”

~~Ms. [redacted]~~ did not approach Darrell Williams. She actually approached Jarred Shaw 3...“who asked me if I had taken her money and driver’s license. I told her I had not taken them. She appeared to have been drinking.

4. She then asked me if I would help her look for these items, and I agreed and followed her outside where we looked briefly but could not find them. The lighting was poor, and we tried to use the lights from our cell phones to light up the area but could not find the items. There were a number of people standing outside in the yard area where we looked for her money and license.”

...

6. When I went with ~~Ms. [redacted]~~ to look for her things, Darrell Williams was still in the basement talking to his friend, ~~Emily [redacted]~~.”

Attached Affidavit of Jarred Shaw dated the 4th day of May, 2011

~~Ms. [redacted]~~ subsequently found her driver’s license in the driver’s seat of her vehicle.

“I walk to my car and that is where I found my ID, on my seat.” (TR 41)

~~Ms. [redacted]~~ could not identify Mr. Williams that evening only a few minutes after supposedly being near him. Therefore, she had no idea of who the person was that was near her in the basement of the house she was in.

~~Ms. [redacted]~~ testified that she does goes to the basketball games and that she saw two (2) basketball players. She testified that a person said he was a basketball player and that his name was Darrell. She had never met or spoken to him before. She only spoke with him a few seconds outside of Outlaws. (TR 158 – 160)

~~Ms. [redacted]~~ testified that they (~~Ms. [redacted]~~) had all looked at the Oklahoma State University Basketball team photo separately on their computers to try to identify the other players that were there. (TR 229) They were then shown a different Oklahoma State University Basketball team photo at the Stillwater Police Department by Les Little. (TR 230 - 232)

The three (3) women were not shown a traditional lineup at any time by anyone.

The United States Supreme Court in Perry vs. New Hampshire, 132 S. Ct. 716 (2012) has held the following:

“The Constitution protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording the defendant means to persuade the jury that the evidence should be discounted as unworthy of credit. Only when evidence ‘is so extremely unfair that its admission violates fundamental conceptions of justice’ does the Due Process Clause preclude its admission.”

The identification provided by the Stillwater Police Department was a photo of the Oklahoma State University Basketball team. The complaining witnesses in the instant case were told prior to going to the party that Oklahoma State Basketball players would be there. Therefore, the viewing of the team photo meant that the alleged perpetrator was in the lineup so that someone should be picked out of the photograph as the perpetrator. It also makes it more likely that if a person is selected in the photo lineup that the identified one will be identified again regardless of the correctness of the identification. Simmons vs. U.S., 390 U.S. 377 (1968)

~~Ms. [Name]~~, who supposedly went to all the games and could identify the players, did not know that Yayi was not a member of the team. She was told this by the police at the time of the line-up. (TR 232) This reinforces the premise that the identification is tainted by the fact that they were told these were basketball players and the “photo lineup” was the basketball team.

The identification of Mr. Williams should be suppressed for the following reasons:

1. Neither of the two (2) witnesses knew Mr. Williams prior to this evening;
2. There is not any indicia of truthfulness or honesty regarding the person who identified himself as Darrell;
3. The two witnesses stated that they were told they were going to be around members of the Oklahoma State University Basketball team;

4. There is nothing to indicate that anyone was actually a basketball player except perhaps Marshall Moses. One of the witnesses testified that she independently recognized him and knew who he was;
5. None of the witnesses could identify anyone else at the party that was a basketball player;
6. The witnesses circled and used question marks to identify people who might have been at the party;
7. The witnesses had previously viewed a photograph of the Oklahoma State University Basketball team on the computer;
8. The witnesses after viewing the photograph on the computer still did not know that “Yayi” was not a member of the team.

We know that ~~Mr. Shaw~~ cannot identify Mr. Williams because of the affidavit of Mr. Shaw. The identification of Mr. Williams as the perpetrator of any crime whatsoever is so tainted by the lineup of the Oklahoma State University Basketball team lineup identification that it cannot be determined if the identification of Mr. Williams now is as a result of “picking” him out of a suggestive and inappropriate lineup or an identification from the evening in question. The identification should be suppressed.

Respectfully submitted,

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