



Police Law Bulletin



City Attorneys' Office

Toni M. Smith, Assistant City Attorney

In this issue:

Sixth Circuit Erroneously Concluded That State Court Ruling Affirming Murder Conviction Was Contrary To Or Involved An Unreasonable Application of Clearly Established Federal Law – Pgs. 1-4

Interview Did Not Violate Juvenile's Right To Have Parent Present During Interrogation, Sixth Amendment, Nor Requirements Related To Electronic Recordings of Homicide Interrogations – Pgs. 4-5

Defendant's Consent to Search and Waiver of Miranda Valid Despite Officer's Lack of Fluency in Spanish – Pgs. 5-7

Defendant's Command of Conversational English Was Sufficient to Find His Waiver of Miranda Rights to Be Voluntary, Knowing and Intelligent – Pgs. 7-8

N.C.G.S. §15A-284.52, the Eyewitness Identification Reform Act, Does Not Apply to Showup Identifications – Pgs. 8-9

UNITED STATES SUPREME COURT



Sixth Circuit Erroneously Concluded That A State Supreme Court Ruling Affirming Defendant's Murder Conviction Was Contrary To Or Involved An Unreasonable Application of Clearly Established Federal Law

***Warden v. Dixon*, 565 U.S. ____ (Nov. 7, 2011).**

Archie Dixon and Tim Hoffner murdered Chris Hammer in order to steal his car. Dixon and Hoffner beat Hammer, tied him up, and buried him alive, pushing the struggling Hammer down into his grave while they shoved dirt on top of him. Dixon then used Hammer's birth certificate and social security card to obtain a state identification card in Hammer's name. After using that identification card to establish ownership of Hammer's car, Dixon sold the vehicle for \$2,800.

Hammer's mother reported her son missing the day after his murder. While investigating Hammer's disappearance, police had various encounters with Dixon, three of which were relevant here.

On November 14, 1993, a police detective spoke with Dixon at a local police station. It was undisputed that this was a chance encounter-Dixon was apparently visiting the police station to retrieve his own vehicle, which had been impounded for a traffic violation. The detective issued *Miranda* warnings to Dixon and then asked to talk to him about Hammer's disappearance. Dixon declined to answer questions without his lawyer present and then left the station.

As their investigation continued, police determined that Dixon had sold Hammer's car and forged Hammer's signature when cashing the check he received in that sale. Police arrested

Dixon for forgery on the morning of November 9. Beginning at 11:30 a.m., detectives intermittently interrogated Dixon over several hours, speaking with him for about 45 minutes total. Prior to the interrogation, the detectives had decided not to provide Dixon with *Miranda* warnings for fear that he would again refuse to speak with them. Dixon readily admitted to obtaining the identification card in Hammer's name and signing Hammer's name on the check, but said that Hammer had given him permission to sell the car. Dixon claimed not to know where Hammer was. The detective's challenged Dixon's tale and told him that Hoffner was providing them more useful information. At one point, a detective told Dixon, "now is the time to say" whether he had any involvement in Hammer's disappearance because if Hoffner "starts cutting a deal over there, this is kinda like, a bus leaving. The first one that gets on it is the only one that's gonna get on." Dixon insisted that he had told police everything he knew and that he had nothing whatsoever to do with Hammer's disappearance. At approximately 3:30 p.m. the interrogation concluded, and the detectives brought Dixon to a correctional facility where he was booked on a forgery charge.

That same afternoon, Hoffner led police to Hammer's grave, claiming that Dixon told him that Hammer was buried there. After concluding their interview with Hoffner and releasing him, the police had Dixon transported back to the police station.

Prior to any police questioning, Dixon stated that he had heard the police had found a body and asked whether Hoffner was in custody. The police told Dixon that Hoffner was not in custody, at which point Dixon stated, "I talked to my attorney and I want to tell you what happened." The police read Dixon his *Miranda* rights, obtained a signed waiver, and spoke with Dixon for about half an hour. Later that evening the police, now using a tape recorder, again advised Dixon of his *Miranda* rights. In a detailed confession, Dixon admitted to murdering Hammer but attempted to put the lion's share of the blame on Hoffner.

At Dixon's trial, the Ohio trial court excluded both Dixon's initial confession to forgery and his later confession to murder. The State appealed. The State did not dispute that Dixon's forgery confession was properly suppressed, but argued that his murder confession was admissible because he had received *Miranda* warnings prior to that confession. The Ohio Court of Appeals agreed and allowed Dixon's murder confession to be admitted as evidence. Dixon was convicted and sentenced to death. Dixon appealed and the Ohio Supreme Court affirmed the conviction and sentence. Dixon then filed for a writ of habeas corpus in the U.S. District Court for the northern District of Ohio. Dixon claimed that the state court decisions allowing the admission of his murder confession contravened clearly established federal law. The District Court denied relief, but the Sixth Circuit reversed. The Sixth Circuit had authority to issue the writ of habeas corpus only if the Ohio Supreme Court's decision was contrary to, or involved an unreasonable application of, clearly established federal law. The Sixth Circuit believed that the Ohio Supreme Court's decision contained three such egregious errors.

First, according to the Sixth Circuit, police could not speak to Dixon on November 9, because on November 4 Dixon had refused to speak to police without a lawyer. The United States Supreme Court found this analysis plainly wrong. Dixon was not in custody during his chance encounter with police on November 4. If a person is not in custody then *Miranda* does not apply. Although police had advised Dixon of his *Miranda* rights on November 4, those rights actually did not exist due to the lack of custody and thus, could not be invoked by Dixon.

Second, the Sixth Circuit held that police violated the Fifth Amendment by urging Dixon to “cut a deal” before his accomplice Hoffner did so. The Supreme Court noted though that none of its holdings suggests that police may not urge a suspect to confess before another suspect does so.

Third, the Sixth Circuit held that the Ohio Supreme Court unreasonably applied the United States Supreme Court’s precedent in *Elstad*. In that case, a suspect who had not received *Miranda* warnings confessed to burglary. Approximately an hour later, after he had received *Miranda* warnings, the suspect again confessed to the same burglary. The Court held that the later, warned confession was admissible because although the initial statement was in violation of *Miranda*, the second warned statement appeared to have been voluntarily made. The United States Supreme Court recognized that Dixon’s first interrogation, in which he confessed to the forgery, involved an intentional violation of *Miranda*. The Court concluded though that, as in *Elstad*, Dixon’s later warned confession regarding the murder was voluntary. The Court considered the fact that during Dixon’s first interrogation he received several breaks, was given water and food, and was not abused or threatened. Prior to his second confession, Dixon made an unsolicited declaration that he had spoken with his attorney and wanted to tell the police what had happened to Hammer. Then, before giving his taped confession, Dixon twice received *Miranda* warnings and signed a valid waiver.

The Sixth Circuit believed that Dixon’s confession was inadmissible under *Elstad* because it was the product of a “deliberate question-first, warn-later strategy” which was prohibited by the United States Court’s decision in *Missouri v. Seibert*. In *Seibert*, police employed a two-step strategy to reduce the effect of *Miranda* warnings: A detective exhaustively questioned Seibert until she confessed to murder and then, after a 15 – 20 minute break, gave Seibert *Miranda* warnings and led her to repeat her prior confession. The Court held that Seibert’s second confession was inadmissible even though it had been preceded by a *Miranda* warning. The court reasoned that upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent. The Supreme Court distinguished *Seibert* though from this case. In *Seibert*, the suspect’s first unwarned interrogation left little, if anything, of an incriminating nature left unsaid, making it unnatural not to repeat during the second interrogation what had been said before. But in this case, Dixon steadfastly maintained during his first unwarned interrogation that he had nothing whatsoever to do with Hammer’s disappearance. Thus, unlike in *Seibert*, there is no concern here that police gave Dixon *Miranda* warnings in an attempt to have him repeat an earlier murder confession, because there was no confession to repeat. Indeed Dixon contradicted his prior unwarned statements when he confessed to Hammer’s murder. There is also no evidence that police used Dixon’s earlier admission to forgery to induce him to waive his rights later: Dixon declared his desire to tell police what happened to Hammer before the second interrogation session ever began. There was simply no nexus between Dixon’s unwarned admission to forgery and his later, warned confession to murder. Moreover, in *Seibert*, the Court was concerned that the *Miranda* warnings did not effectively advise the suspect that she had a real choice about giving an admissible statement because the unwarned and warned interrogations blended into one continuum. That was not the case here. Four hours passed between Dixon’s unwarned interrogation and his receipt of *Miranda* rights, during which time he traveled from the police station to a separate jail and back again; claimed to have spoken to his lawyer; and learned that police were talking to his accomplice and had found Hammer’s body. Things had changed. This significant break in time and dramatic change in circumstances created a new and distinct experience ensuring that Dixon’s prior, unwarned interrogation did not undermine the effectiveness of the *Miranda* warnings he received before confessing to Hammer’s murder.

The admission of Dixon's murder confession was consistent with the Court's precedents: Dixon received *Miranda* warnings before confessing to Hammer's murder; the effectiveness of those warnings was not impaired by some sort of two-step interrogation technique condemned in *Seibert*; and there is no evidence that any of Dixon's statements were the product of actual coercion. That does not excuse the detectives' decision not to give Dixon *Miranda* warnings before his first custodial interrogation. But the Ohio courts recognized that failure and imposed the appropriate remedy: exclusion of Dixon's forgery confession. Because no precedent of the Supreme Court required Ohio to do more, the Sixth Circuit was without authority to overturn the State's highest court pursuant to defendant's writ of habeas corpus.

NORTH CAROLINA COURT OF APPEALS



Interview Did Not Violate G.S. 7B-2101 Regarding A Juvenile's Right To Have A Parent Present During Interrogation, Defendant's Sixth Amendment Rights, Nor G.S. 15A-211 Requiring Electronic Recordings of Homicide Interrogations

State v. Williams, No. COA10-571 (1 February 2011).

On January 24, 2007, as part of their investigation into the November 25, 2006 murder of Satwinder Singh, two detectives with the Greensboro Police Department interviewed 17-year-old defendant, Raytheon Williams, who was in the Guilford County jail on unrelated charges. The detectives had the defendant brought to an interview room at the jail. After explaining that they were there to investigate a murder and robbery at the Aman Mini Mart, Detective Matthews read defendant a juvenile "Statement of Rights" which defendant signed indicating that he understood. After reviewing a juvenile "Waiver of Rights" with defendant, defendant requested to speak with his mother. Upon hearing defendant's request, Detectives Matthews and Holder ended the interview, indicated defendant's request on the Waiver of Rights form, and exited the interview room. For the next ten minutes or so, the detective reviewed the information in the case file to determine how to contact defendant's mother. Since the case file contained conflicting information regarding where defendant's mother lived, the detectives re-entered the interview room for the sole purpose of asking defendant how they could get in touch with his mother. Defendant gave detectives his mother's current address and advised that they would "have to call several people to get in touch with her" because she did not have a phone. Defendant then asked Detective Matthews "when [he] was going to talk to him about the robbery and murder at the convenience store..." The detective explained that he could not speak with defendant about the incident because defendant had stated that he wanted his mother present for any such questioning. Defendant then told the detective that he had "misunderstood" and that defendant only wanted his mother present for questions related to the charges for which he was currently in jail, but said specifically that he "did not want her present when he talked to [Detective Matthews] about the robbery and the man getting killed." The detective asked defendant if he was sure and defendant indicated that he was. Detective Matthews advised defendant that he would give him a few minutes and would be back in to talk to [defendant] if he still wanted to talk," at which point the detectives left the room once again. A few minutes later, the detectives re-entered the interview room, and Detective Matthews asked defendant if he still wanted to speak with him without his mother present. Defendant stated that he did. Defendant was advised of his rights again, using a second,

unmarked copy of the Statement of Rights form. Defendant signed this second form and also signed the Waiver of Rights form. Defendant then gave a statement implicating himself in the robbery and murder.

Defendant filed a motion to suppress his incriminating statement. The trial court denied the motion. A jury found defendant guilty of first-degree murder, robbery with a firearm, and conspiracy to commit robbery with a firearm. Defendant appealed.

Defendant first argued that his incriminating statement was obtained in violation of G.S. 7B-2101. This statute requires that once a juvenile has requested the presence of a parent, or any one of the parties listed in the statute, the defendant may not be interrogated further until counsel, a parent, guardian, or custodian has been made available to him, unless the accused himself initiates further communication. In the present case, although defendant initially invoked his right to have his mother present during his custodial interrogation in accordance with G.S. 7B-2101, the evidence shows that defendant himself thereafter initiated further communication with the investigating detectives. Such communication was not the result of any further interrogation by detectives. Instead, the evidence shows that defendant told the detectives that they “misunderstood” him when he requested the presence of his mother for further questioning, because defendant only wanted his mother present during any questioning related to the charges for which he was already in custody. Defendant specifically told the detectives that he did not want his mother present during any questioning related to the robbery and murder at the Aman Mini Mart. Therefore, the Court of Appeals agreed with the trial court that defendant’s incriminating statement was not elicited in violation of G.S. 7B-2101.

Next the defendant argued that the trial court erred by denying his motion to suppress because his incriminating statement was obtained in violation of his Sixth Amendment rights. The Sixth Amendment right to counsel is offense-specific and attaches only at or after the initiation of adversary judicial proceedings by way of an initial appearance before a magistrate, a first appearance in district court or an indictment. Defendant had not been charged with the Aman Mini Mart robbery and murder when detectives questioned him about those crimes and was only in custody on charges unrelated to this case. Therefore, defendant’s Sixth Amendment rights could not have been violated since that had not even attached when he was questioned by the detectives.

Finally, defendant contended that the trial court erred by denying his motion to suppress because his interrogation was not electronically recorded in compliance with G.S. 15A-211. However, that statute is only applicable to interrogations occurring on or after March 1, 2008 and the interrogation at issue took place on January 24, 2007, more than one year before the statute’s effective date.

Therefore, the Court of Appeals upheld the trial court’s denial of defendant’s motion to suppress.

Defendant’s Consent to Search and Waiver of Miranda Rights Were Valid Despite Officer’s Lack of Fluency in Spanish

***State v. Medina*, No. COA10-71 (20 July 2010).**

On April 13, 2007, the Charlotte-Mecklenburg Police Department set up surveillance of a Burger King parking lot. The police were acting on information received from a confidential source that a Hispanic male, driving a burgundy Mitsubishi with chrome wheels, would arrive at approximately 8:30 a.m. and would be in possession of narcotics. Defendant arrived in the parking lot at 9:10 driving a burgundy Mitsubishi with chrome wheels. After defendant parked his car, he was approached by two uniformed officers. One officer addressed defendant in English. Defendant, who does not speak English, was nonresponsive. The other officer, Williamson, who had taken 4 semesters of Spanish in high school and 4

semesters in college, but who was not fluent, addressed defendant in Spanish. Williamson asked defendant if he had drugs, guns or weapons in the vehicle and the defendant said that he did not. The officer then pointed to defendant's car and asked if he could "look." Defendant nodded his head affirmatively. A search of defendant's car revealed heroin and cocaine in the arm rest and in a can of WD-40 with a false bottom. Defendant was arrested and taken to police headquarters. Vice officers asked Officer Williamson if he could *Mirandize* defendant and translate their questions. Williamson indicated that he could. Defendant responded to Officer Williamson's questions about his age, date of birth, education level and address. When Officer Williamson was unfamiliar with the location defendant identified as his address, the officer asked defendant to write it down, which defendant did. The officer then read aloud an Adult Waiver of Rights form which was written in Spanish. Defendant read along and initialed next to each *Miranda* right. Subsequently, Officer Williamson began translating the vice detectives questions into Spanish and translating defendant's answers into English. During this time, defendant gave coherent and appropriate answers to the questions asked.

Defendant was indicted on two counts of trafficking in heroin and possession with intent to sell and deliver cocaine. Defendant made a motion to suppress evidence seized as a result of the search of his vehicle and any statements made by him that same day arguing that his consent to search and waiver of *Miranda* was not made knowingly, voluntarily or understandingly. The trial court denied his motion his suppress. Defendant pled guilty but reserved his right to appeal.

Defendant maintained that his consent was rendered involuntary by Officer Williamson's lack of fluency in Spanish coupled with his wearing a sidearm while seeking the consent, and that the officer's non-fluent *Miranda* warnings prevented him from knowingly waiving his rights.

Evidence seized during a warrantless search is admissible if the State proves that the defendant freely and voluntarily, without coercion, duress or fraud, consented to the search. Whether the consent given was free and voluntary is determined by the totality of the circumstances. After examining the record and weighing the totality of the circumstances, the Court of Appeals concluded that defendant's argument that his consent was not voluntary was without merit. Defendant was nonresponsive to the first officer who attempted to communicate in English, but responded appropriately to Officer Williamson's questions in Spanish. In fact, the two conversed entirely in Spanish throughout defendant's encounter with police and subsequent arrest with the officer often asking open-ended questions and defendant answering with complete phrases that extended beyond simple yes and no responses. While Officer Williamson was not fluent in Spanish, he had extensive instruction and experience speaking Spanish. There was no indication in the record that defendant did not understand his questions or that he ever gave an inappropriate response to a question. In addition, there was no evidence that defendant was intimidated, threatened or promised anything in order to gain his consent, nor was he handcuffed or restrained in any way during the search. Finally, the officers' sidearms were never drawn and our State Supreme Court has already determined that the mere presence of a holstered weapon does not serve to coerce a defendant or render consent involuntary.

Likewise, the Court of Appeals found the defendant's claim that his *Miranda* waiver was invalid was without merit. For a valid waiver of *Miranda* rights, the State must prove that the defendant waived his rights voluntarily, knowingly and intelligently. As with consent to search, these factors are determined by the same totality of the circumstances. In this case, the evidence showed that the officer and defendant communicated effectively. Defendant gave coherent, logical and appropriate answers to the questions asked. Moreover, when the officer informed defendant of his *Miranda* rights, he was not even translating English into Spanish, but rather reading aloud in Spanish from a Spanish version of a *Miranda* rights waiver form. Even assuming, *arguendo*, that defendant did not understand the officer when he read the warnings to the defendant, the record shows that defendant appeared to have read himself each right

which was written in Spanish, initialed next to each right, and signed the form indicating he understood his rights.

Therefore, the North Carolina Court of Appeals affirmed the trial court's denial of defendant's motion to suppress.

Defendant's Command of Conversational English Was Sufficient to Find His Waiver of Miranda Rights to Be Voluntary, Knowing and Intelligent

***State v. Mohamed*, No. COA09-943 (20 July 2010).**

At 8:50 p.m. on May 13, 2007, defendant approached Douglas Whitlock at a carwash in Greensboro and took \$20. and a credit card from him at gunpoint. Defendant then fled the scene on foot. At the time of the robbery, defendant was wearing a black baseball cap. Approximately six minutes later, defendant, still wearing the black baseball cap, entered a nearby Shell station and purchased cigarettes using Whitlock's credit card. The clerk at the store knew defendant's last name and realized that it did not match the name on the credit card. The clerk contacted the police as soon as defendant left the premises. The clerk provided the police with a surveillance videotape depicting defendant's purchase and a copy of the credit card receipt that defendant had signed. The clerk also provided a description of the defendant's vehicle and its license plate number. When an officer ran the license plate number, the registered owner's last name matched that of the defendant's. At approximately 12:15 a.m. on May 14, an officer spotted defendant's vehicle, stopped the car and took defendant into custody. A search of the vehicle resulted in the discovery of a black baseball cap and a spent .22 caliber shell, however, no firearm was found in the vehicle. Defendant was taken to the police station and advised of his *Miranda* rights. The detective wrote the word "yes" next to each sentence that he read after receiving affirmation from the defendant that he understood its meaning. Defendant signed the Statement of Rights and Waiver of Rights form. Although defendant spoke with an accent, the detective testified that the defendant appeared to have no comprehension problems and did not request an interpreter prior to or during the interrogation. During the interview, defendant reported making a purchase at the Shell gas station "with a credit card I found. I did not rob anybody." The detective pointed out that no one had mentioned a robbery and then asked defendant why he robbed Mr. Whitlock. Defendant became emotional and cried out, "I was broke." He later made additional incriminating statements, including stating that after the robbery, he threw the gun and credit card out of the car window. Defendant also provided a written statement to the police, in which he explained, "I want to same white gay and I poot the gun in his face and I take 20\$ and cradet card and after that I went to the par[t]y."

Defendant was arrested, indicted and subsequently convicted of robbery with a dangerous weapon and obtaining property by false pretenses. Defendant argued, among other things, that his confession should be excluded because the *Miranda* warnings given to him were inadequate and that he did not freely and voluntarily waive his *Miranda* rights. Defendant alleged that, as an 18- year-old tenth grader who had only been in the United States for six months, his ability to comprehend the nuances of the English language were extremely limited so that he lacked the ability to understand and to knowingly and intelligently waive his *Miranda* rights. Thus, his arguments stemmed from his allegedly deficient command of the English language.

Whether a proper waiver of defendant's *Miranda* rights occurred is determined by examining the totality of the circumstances. The Court found that there was ample evidence to believe that the defendant had a significant command of the English language: An officer testified at trial that he had spoken with the defendant and his attorney during an investigation of a separate robbery and that defendant seemed as though he understood most of the questions; when defendant's vehicle was initially stopped by the

police, defendant followed all of the officer's verbal instructions; the defendant did not express any comprehension difficulties during the interview; and defendant drafted his confession in English and, while it was not a model of English composition, it was easily comprehensible. Therefore, based upon this and the rejection of defendant's other arguments, the North Carolina Court of Appeals affirmed the trial court's denial of defendant's motion to suppress.

N.C.G.S. §15A-284.52, the Eyewitness Identification Reform Act, Does Not Apply to Showup Identifications

***State v. Rawls*, No. COA09-1029 (19 October 2010).**

On the morning of September 29, 2008, Linette Smith finished working the third shift and returned home. She had gone to bed when, at approximately 10:30 a.m., she heard a loud noise. She discovered that the back door of her house had been kicked in and broken. She saw two men standing in the house and one man just outside the door. The man later identified as the defendant was the closest to Smith – about a table's length away. When Smith exclaimed, "What the hell," she and defendant "looked right dead at each other." The men then fled. From her backyard, Smith saw them running toward a path that led to a nearby apartment complex. Smith went back inside and called the police. Smith informed the police that the suspects had gone down the path towards the apartments and described them as "two black males...wearing white tee shirts and khaki pants; the third one was wearing dark pants, possibly blue jeans and an unknown shirt."

An officer spotted three men in an apartment breezeway. One of the men, defendant, was wearing light colored warm-up pants and a hooded sweatshirt, another was wearing a white tee shirt and khakis, and the third was wearing a white tee shirt and jeans. Meanwhile, a police canine had tracked from Smith's house to the same breezeway. An officer reported back to Smith, "They think they found the guy," and requested to drive Smith, about 45 seconds away, to the apartment complex for a showup. Smith identified all three as the men who had been in her house. She "pointed them out" individually, saying "that was him, the first one; and this is the second one, and that's the third one." Ms. Smith indicated that the first two men were the ones inside of her living room, but she was unsure if the third one had ever actually entered her home. When asked if she was sure about the identifications, she replied that "she was positive, and that she could not forget their faces."

Defendant was subsequently indicted on charges of breaking and entering. Defendant filed a motion to suppress any evidence related to the showup on the grounds that the showup was impermissibly suggestive and violated N.C.G.S. §15A-284.52, the Eyewitness Identification Reform Act ("EIRA"). The trial court ruled that the EIRA does not apply to showups and denied defendant's motion. Defendant was found guilty. Defendant appealed arguing that the trial court erred when it concluded that the EIRA does not apply to showup identifications.

After reviewing the language of the EIRA (which provides procedural guidelines for conducting live and photo *lineups*), considering prior court decisions distinguishing lineups from showups, and noting the fact that defendant's argument would effectively eliminate the use of showups, the North Carolina Court of Appeals held that the EIRA does not apply to showups.

Next, the Court considered defendant's argument that the showup was impermissibly suggestive. Before Smith was taken to the apartments for the showup, an officer had told her, "They think they found the guy." By the time Smith arrived at the apartments and saw defendant, he had been detained, was sitting down, and there were several officers around. Thus, the Court of Appeals concluded that the showup procedure as it occurred in this case was unduly suggestive. However, the Court noted that analysis of

such an issue does not end with this point. If a court finds that an identification procedure was impermissibly suggestive, it must then determine whether the procedure created a substantial likelihood of irreparable misidentification. When evaluating whether such a likelihood exists, a court considers five factors: 1. Opportunity of the witness to view the criminal at the time of the crime; 2. Witness's degree of attention; 3. The accuracy of the witness's prior description of the criminal; 4. Level of certainty expressed by the witness; and 5. The length of time between the crime and the confrontation. While Smith only viewed the suspects for a short time, she looked "dead at" the defendant from only a table's length away, it was 10:30 in the morning, and nothing obstructed her view. The showup occurred only 15 minutes later, and Smith was "positive" about the identifications and stated that "she could not forget their faces." Consequently, the Court of Appeals concluded that while the showup procedure used here was impermissibly suggestive, nonetheless, there was no substantial likelihood of irreparable misidentification.

The Court of Appeals affirmed the trial court's denial of defendant's motion to suppress.

Note: Officers should follow the guidelines for set forth in GO 4077, Eyewitness Identification, when conducting showups and photo lineups.