



POLICE / PROSECUTOR UPDATE

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In last month's issue we examined a case dealing with a pretrial lineup identification. The Court of Appeals recently decided a case involving another identification procedure - the one-on-one confrontation or "show-up."

The facts of the case reveal that around midnight A.L. was the sole employee working in a convenience store. She watched a man drive up and put air in his tires. The area was illuminated by bright lights, and A.L. had an unobstructed view. The man entered the store, pulled a gun and robbed A.L. They were face-to-face for one to two minutes, and were about two feet apart. After the man was given the money, he ordered A.L. to leave the store and run. She ran to a nearby house, called the police, and gave them a description. The defendant's car was stopped, and he was arrested about 15 minutes later. A.L. was then told a suspect had been apprehended (it would be better not to tell a witness this) and that she should go to the jail. While in the jail lobby at 2:00 a.m., she observed the defendant being walked across the lobby by an officer. She indicated that he was the man who robbed her. A lineup was not conducted because no other jail inmates were close to the defendant's age.

As the law has developed, the admissibility of show-up identification evidence turns on an evaluation of whether, under the totality of the circumstances, the show-up was conducted in such a manner as to lead the witness to make a mistaken identification. The Indiana Supreme Court has identified several factors to be considered in determining whether a particular show-up is likely to lead to a mistaken identification. They include: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the length of the initial

observation of the criminal; (3) the lighting conditions; (4) the distance between the witness and the criminal; (5) the witness' degree of attention; (6) the accuracy of the witness' prior description of the criminal; (7) the level of certainty demonstrated by the witness; and (8) any identifications of another person. Also, a show-up will be viewed more favorably the closer in time it occurs to the commission of the crime. Finally, a show-up is not as offensive where a photo or corporeal lineup is not possible.

Based upon the law, the show-up in this case was proper. A.L. had a significant opportunity to observe the man who robbed the store. She had an unobstructed, well-lit view of him outside the store. She then observed him face-to-face at a distance of two feet for at least a minute. The actual show-up occurred 2 1/4 hours after the robbery, which was close enough in time that the image of the robber was likely to be fresh in the witness' memory. Further, when A.L. first called the police, she described the robber as white, about sixty years old and overweight, with glasses and balding gray hair. He was about 5'7" tall. The defendant was a 61-year-old white man, 5'7" tall. He weighed 190 pounds and had gray hair and wore glasses. Finally, it was significant that police testified that a proper lineup could not be conducted at the time because there were no inmates in the jail who were the defendant's age.

Two points to remember. If possible, a photo array or lineup should preferably be used. And a show-up should be conducted as close in time to the commission of the crime as possible, certainly within a very few hours.

Mitchell v. State, ___ N.E.2d ___ (Ind. App. 01/26/98).