STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM LAURENS COUNTY
Court Of General Sessions
The Honorable Jocelyn J. Newman, Circuit Court Judge

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Appellate Case No. 2023-000570

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THE STATE, Respondent,

v.

ANTONIO LAFAYETTE WILLIAMS, JR., Appellant.

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# FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

Under Biggers a defendant may be deprived of due process if an identification was unnecessarily suggestive and has a substantial likelihood of irreparable misidentification. Did the court err in admitting identification evidence where all men in the lineup had similar skin complexion, eye color, and facial hair, but only three of six men had facial tattoos?

## STATEMENT OF THE CASE

A Laurens County Grand Jury indicted Appellant Antonio Williams for attempted murder and armed robbery. He proceeded to a jury trial on March 27-30, 2023, before the Honorable Jocelyn J. Newman. Williams was convicted as charged and sentenced to two consecutive fifteen-year sentences. This direct appeal follows.

## STATEMENT OF FACTS

On the evening of Sunday, May 23, 2021, Victim and Cousin left Clinton, South Carolina, and went to an abandoned area in Fountain Inn, South Carolina, to sell Appellant seven pounds of marijuana. (R. pp. 144-146). Shortly thereafter, Appellant arrived in a gold Toyota Avalon. (R. p. 146). Victim spoke with Appellant for approximately two minutes before he shot a gun at Victim. (R. pp. 146-147). Once shots were fired, Victim ran in the opposite direction and was shot in both legs. (R. p. 151; pp. 182-183). Cousin was able to escape and hide in the woods. (R. p. 183). After the vehicle left the scene, Cousin got Victim in the backseat of their car, rushed him to the hospital, and called 911 at approximately 9:36 p.m. (R. p. 179; p. 331).

Once Cousin got to the hospital, police took a statement and description of the shooter. (R. p. 195). Cousin described the perpetrator as a light skinned black male wearing a white t-shirt with short to bald hair and facial tattoos. (R. p. 223). Afterwards, Cousin led officers back to the scene of the crime where they conducted a search of the area. (R. p. 205). Investigator Turner asked Detective Rivera to utilize the Sentinel ankle monitor program to run a search for anyone in the area during the day and time of the shooting. (R. p. 212). The results returned two people, and Investigator Turner pulled up both DMV photos and determined Appellant's photograph closely resembled the description given. (R. p. 213; p. 217). Investigator Turner sent his photo to South Carolina Law Enforcement Division (SLED) to generate a photo lineup. (R. pp. 217-218). The lineup produced by SLED showed three people with facial tattoos and three people without facial tattoos. (Court's Exhibit 4). The lineup depicts six men all with similar facial features, skin tone, and hair type as that of Appellant's. (R. p. 223).

The following day at about 2:00 p.m., Investigator Turner, Nations, and Staton visited Victim at his home to obtain a statement. (R. p. 221; 311). Victim's demeanor was described as

coherent, cooperative, fully alert and aware. (R. pp. 219-220; pp. 227-278; p. 312). The investigators asked for a description of the shooter and noted that it was the same as the description that Cousin gave the night before. (R. p. 220). Following that confirmation, Investigator Turner then presented the photo lineup to Victim, informing Victim that the lineup may or may not contain a photograph of the person who committed the crime. (R. pp. 220-222). All three investigators testified that Victim picked Appellant's photograph out of the lineup without hesitation. (R. pp. 225- 226; p. 279; pp. 313-314). Investigator Turner testified that no one influenced Victim to pick number two on the photo lineup. (R. pp. 223-224).

Appellant's GPS tracking flagged him arriving at the scene of the crime at 9:32 p.m. and showed him leaving at 9:34 p.m. (R. p. 330). According to the GPS tracking system, Appellant was also located at the Spinx gas station between 10:40 to 10:50 p.m. on May 23, 2021. (R. p. 290). Investigator Staton went to the Spinx gas station and requested to view the footage for May 23 at 10:40 to 10:50 pm. (R. p. 317-318). The surveillance footage showed Appellant at the gas station in a gold Toyota Avalon. (R. p. 318). Officers found one 10-millimeter casing, one 9-millimeter casing, and nine .40 caliber casings at the crime scene on Jones Road. (R. p. 234). Victim stated he shot one time. (R. p. 234).

A few weeks before the trial, Appellant made three phone calls to Victim using another inmate's pin number. Investigator Staton testified that he could verify both Victim and Appellant as the speakers on the recorded jail phone calls. (R. p. 315). On these phone calls, Appellant's voice can be distinctly heard talking to Victim about what he should say in a new written statement. (State's Exhibit 37). Appellant can be heard telling Victim "You still need to put you know for a fact it wasn't me." (State's Exhibit 37). The two discussed Victim claiming he was

high on drugs during the shooting and the following day during the visit from the investigators. (State's Exhibit 37). Appellant discussed payment for Victim's statements. (State's Exhibit 37).

During Victim's testimony, he recanted his identification of Appellant as the shooter and claimed that the investigators told him to pick number two on the lineup. (R. p. 157; p. 158; 162). Victim also refused to point Appellant out in court as the shooter. (R. p. 156). Victim testified that he had not spoken to Appellant prior to the beginning of the trial. (R. p. 163).

## STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law. State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845 (2006).

## ARGUMENT

**Under Biggers, a defendant may be deprived of due process if an identification was unnecessarily suggestive and has a substantial likelihood of irreparable misidentification. The court did not err in admitting identification evidence where all men in the lineup had similar skin complexion, eye color, and facial hair, but only three of six men had facial tattoos.**

The photographic lineup applied in Appellant's case was not unduly suggestive because it presented six similar appearing men with similar skin complexion, eye color, and facial hair. Additionally, while all men in the lineup did not have facial tattoos, three of the men had similar facial tattoos. Even if the photographic lineup was unduly or unnecessarily suggestive, the trial judge properly admitted the identification evidence because the identification of Appellant was sufficiently reliable as there was not a substantial likelihood of misidentification. Accordingly, the trial judge did not abuse his discretion by admitting the identification evidence. This Court should affirm.

### I. Was the lineup unnecessarily suggestive?

When evidence of an eyewitness identification is introduced, a defendant may be deprived of due process of law if that identification was the product of unnecessarily suggestive circumstances, and a *very substantial* likelihood of irreparable mistaken identification exists as a result of those circumstances. Neil v. Biggers, 409 U.S. 188, 197-198 (1972). The United States Supreme Court discusses this issue further in Perry v. New Hampshire, where the court noted "[t]he Constitution protects a[n] Appellant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording Appellant means to persuade the jury that the evidence should be discounted as unworthy of evidence." Perry v. New Hampshire, 565 U.S. 228 (2012). The due process clause will only preclude evidence when it "is

so extremely unfair that its admission violates the fundamental conceptions of justice." Dowling v. United States, 493 U.S. 342, 352 (1990).

Under the first prong, it must be determined whether the identification procedure used was both suggestive and unnecessary under the circumstances. See United States v. Stevens, 935 F.2d 1380, 1389 (3d Cir. 1991) (explaining the question of whether an identification procedure is unnecessarily suggestive depends on both its suggestiveness and necessity). In making the determination, factors to be considered include what procedure was employed, whether the utilized procedure was warranted by an emergency or the existence of exigent circumstances, and whether an alternative procedure could have practically been used that would have been less suggestive. See, e.g., Manson v. Brathwaite, 432 U.S. 98, 109 (1977) (concluding the use of a single-person lineup in the absence of an emergency was unnecessarily suggestive). A determination that the procedure was not suggestive or was necessary under the circumstances involved ends the analysis. State v. Wyatt, 421 S.C. 306, 310, 806 S.E.2d 708, 710 (2017) (if the procedure is found to not be suggestive "the inquiry ends there and the court need not consider the second prong").

Multi-person lineups are generally preferred over other possible procedures. See Simmons v. United States, 390 U.S. 377, 383 (1968) (characterizing an identification procedure where a witness is shown pictures of various individuals without being informed which the suspect is as "the most correct" photographic identification procedure). When determining whether a photographic lineup is unduly suggestive courts consider: the size of the lineup, the manner of presentation by the officers, and the contents of the array. United States v. Thai, 29 F.3d 785, 808 (2d Cir. 1994). Notably, "[a]n unduly suggestive procedure is one which leads the

witness to the *virtually inevitable* identification of the defendant as the perpetrator[.]" Williams v. State, 692 S.E.2d 374, 378 (Ga. 2010) (emphasis added).

"[S]uggestiveness alone does not require the exclusion of evidence." State v. Stewart, 275 S.C. 447, 450, 272 S.E.2d 628, 629 (1980). The ultimate determination on admissibility is controlled by the particular facts and circumstances of the case. Gibbs v. State, 403 S.C. 484, 494, 744 S.E.2d 170, 175 (2013).

In State v. Roberts, the North Carolina Court of Appeals ruled one's own physical appearance does not render an identification procedure unduly suggestive. State v. Roberts, 522 S.E.2d 130 (NC. Ct. App. 1999). The photo lineup depicted defendant as the only one with freckles and a light complexion. Id. at 132-33. Roberts argued that his own physical appearance is what led to the suggestiveness, not the police procedure used. Id. The court, however, ruled that the defendant's unique physical appearance is merely an existing fact and that police's inability to include other individuals with similar features cannot be attributed to suggestiveness in identification procedures. Id.

In the case sub judice, Appellant contends the specific photographic lineup employed in his case was unduly suggestive and created a substantial likelihood of misidentification such that identification evidence should have been excluded during trial. As support for such a contention, Appellant points to the fact he was one of only three individuals depicted in the photographic lineup who had facial tattoos.

Here, the Laurens County Police Department took adequate steps to ensure the photo lineup was not unduly suggestive. First, the critical circumstances warranted the expedient response from the police department. After Victim was shot and left for dead, the police followed Cousin to the hospital and produced a lineup the following day. (R. p. 195; p. 220; p.

311). Next, the subjects appearing in the lineup did not all look the exact same. Cf. Roberts, 522 S.E.2d 133 (NC. Ct. App. 1999) ("the police's inability to include individuals in the lineup that shared defendant's unique physical appearance cannot be attributed to the officers or regarded as the kind of rigged suggestiveness in identification procedures [prohibited by due process]") (internal quotations omitted)). The lineup contained three men with facial tattoos and three without them. (Court's Exhibit 4). The lineup showed six men of similar skin tone, facial hair, and eye color. (Court's Exhibit 4). Considered holistically the lineup was not unduly suggestive. Cf. State v. Simmons, 384 S.C. 145, 168, 682 S.E.2d 19, 31 (Ct. App. 2009) ("Despite Simmons's contention that his ears were smaller than those of the other individuals in the line-up, his photograph does not stand out in such a way as to render the line-up unduly suggestive.").

**II. Was there a substantial likelihood of irreparable misidentification under these circumstances?**

Nonetheless, even if the lineup was reliable, there was no substantial likelihood for misidentification. In evaluating the reliability of an out of court witness identification, the court must consider: (1) the witnesses' opportunity to view the perpetrator, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Brathwaite, 432 U.S. 98, 109 (1977).

Significantly, identification evidence may still be admissible if the State can prove by clear and convincing evidence the identification is reliable notwithstanding the suggestiveness of the identification procedure employed. State v. Govan, 372 S.C. 552, 559, 643 S.E.2d 92, 95-96 (Ct. App. 2007); see State v. Traylor, 360 S.C. 74, 82, 600 S.E.2d 523, 527 (2004) ("Even assuming an identification procedure is suggestive, it need not be excluded so long as, under all

the circumstances, the identification was reliable notwithstanding the suggestiveness"). The exclusion of identification evidence is a "drastic sanction" and should be "limited to identification testimony which is manifestly suspect." Harker v. Maryland, 800 F.2d 437, 443 (4th Cir. 1983).

First, Victim had plenty of time to view Appellant prior to the shooting, as they spoke for minutes before the shooting. (R. p. 146-147). Cf. Roberts, 522 S.E.2d at 133 (NC. Ct. App. 1999) (finding identification evidence reliable where the witness had forty-five seconds to view the perpetrator). Additionally, Victim's identification of Appellant was made with a great degree of attention since it was made during both a crime and a substantial transaction. See Govan, 372 at 560, 643 S.E.2d at 96 (recognizing a victim's attention would have been heightened during an armed robbery). Similarly, Victim gave a comprehensive description of Appellant, noting him as a light skinned black man with a bald head and facial tattoos. Cf. Govan, 372 S.C. at 555, 643 S.E.2d at 93-94 (finding an out-of-court identification to be sufficiently reliable based on the consistency of the prior description even though the description of the suspect was simply "a black guy in a long black jacket and black hat (or rag)"). Lastly, the identification was made shortly after the crime. After the incident, the police followed Cousin to the hospital, obtained a description, and produced a lineup the following day for Victim to see. (R. p. 195; p. 220; p. 311). State v. Mansfield, 343 S.C. 66, 80, 538 S.E.2d 257, 264 (Ct. App. 2000) (concluding an identification was reliable under the totality of the circumstances when "[c]ritically, there was only a brief time between the crime and the identification"). Considered under a totality of the circumstances, Victim's identification does not pose a substantial likelihood of misidentification.

This Court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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September 9, 2024

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THE STATE, Respondent,

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**PROOF OF SERVICE**

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I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Kathrine H. Hudgins, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 9th day of September, 2024.

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## Grace Sommer

**From:** Grace Sommer
**Sent:** Monday, September 9, 2024 12:13 PM
**To:** Hudgins, Kathrine
**Cc:** Andrew Powell; Stock, Chris
**Subject:** The State v. Antonio Lafayette Williams, Jr. (2023-000570)
**Attachments:** WILLIAMS Antonio - FBOR.pdf

Good Afternoon Ms. Hudgins,

Attached please find a Final Brief of Respondent in The State v. Antonio Lafayette Williams, Jr. (2023-000570). This Brief will be filed today with the Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

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