

November 1, 2020

John Nathan Linen, II, Appellant.

v.

The State, Respondent.

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DEC 04 2020

SC Court of Appeals

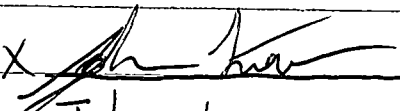
Appellate Case No. 2019-001947

RE: Pro Se brief, Direct Appeal

Upon reviewing my case, I am now raising the issue of; 'Risk of misidentification', has taken place in my case. In addition to showing that an identification procedure ~~created~~ was 'suggestive', the defendant must show that the procedure created a risk of misidentification. See State v. Harris, 308 N.C. 159, 301 S.E. 2d 91 (1983); State v. McCraw, 300 N.C. 610, 268 S.E. 2d 173 (1980); State v. Breeze, 130 N.C. App. 344, 503 S.E. 2d 141 (1998). In deciding whether the suggestive procedure impermissibly influenced the identification, courts consider 'five' factors: (1) the opportunity of the witness to view the perpetrator at the time of the crime; (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 time of confrontation; and (5) the length of time

between the crime and the confrontation. See, e.g. State v. Harris, Supra (citing Neil v. Biggers, 409 U.S. 188 (1972))
When Tyesha Kayawn Sparkman was cross-examined by Attorney Josh Edgeworth, she never positively identified the perpetrator after the crime. The photo line-up was suggestive because ~~it~~ under the photo of Mr. Linen the markings of '3.JPG', were highlighted in that manner. While the other 'fill-ins' had under their photos lower-case letters.
Therefore, I request that I be given a new trial.
Even State v. Traylor, 360 S.C. 74, 81, 600 S.E. 2d 523, 526 (2004) speaks on the misidentification.

Respectfully,

X 
John Linen

John N. Limer # 292131
L-C-I F7N # 93
390 Wisacky Hwy
Bishopville, S.C. 29010

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Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

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