

State of Michigan
IN the Third Circuit Court

People of the State of Michigan,
Plaintiff,

v
Darrell Rashard Ewing,

Defendant.

CASE NO. 10-1495-02

Hon. D. Williams - Claybourne

Motion to Suppress Raymond Love
Identification as Unduly Suggestive and Conducive
to Irreparable Misidentification

Now Comes, Darrell Rashard Ewing, in proper
moving this Honorable and thorough Court to
suppress all testimony regarding pre-trial
identifications and to preclude any in-court
identifications made by Raymond Love.

This motion is based on state and federal
Constitutional Due process grounds and the following
stare decisis:

Argument-

- 1.) Darrell Rashard Ewing is charged with the
most severe charge of first Degree murder. Notably,
a confession replete with details has been made
to these very charges — it completely exculpates
Mr. Ewing.
- 2.) On December 30th, 2009, officers in this
case conducted a photo line up, to which the
defendant was selected by Mr. Love and
suggesting "he looks close." (see Exhibit A)

3.) Disturbingly, it was UNcloaked — before LOVE was presented with the six-pack photo Array Officer Brooks advised him "we're gonna show you some photographs that we think is the snooter." (PE, 2/3/10, 115) One can only assume this was done in an attempt to get the witness to pay special attention "as we placed his photo inside depicting him." Mind this court, the Eastern District of Michigan ruled last June, "Imparting info that the suspect is depicted, can lead a witness to assume his photo is in the array." Salter v Olsen, 2022 US Dist Lexis 98654 [*40-41]

4.) However, it was discovered that Mr. Love's "first and immediate selection" was photo number "two," someone other than this defendant. (TT, 11/3/10, 18-19)

5.) Only after taking a second shot at identifying a suspect, is when Mr. Love then came across the photo with this defendant depicted and undisputably stated, "He looks close." This was far from a positive identification, yet Officer Brooks damagingly instructed Mr. Love, "You picked the correct person" (TT, 11/3/10, 23) Want to know why this case screams a clear case of "Wrongful Conviction" look no further than here.

Discussion:

6.) Because the present pre-trial identification is
(2)

Plainly "Unduly suggestive and conducive to irreparable misidentification" and must be suppressed. *Mason v Brathwaite*, 432 US 98, 111, 116 (1977); *People v Anderson*, 389 Mich 155, 168-169 (1973)

7.) Pointedly, the Michigan Supreme Court in *People v Carter*, 415 Mich 558, 597 (1982) signaled, "When a witness is told he/she is 'correct' or 'incorrect' in making an identification, it is unduly suggestive." ("relief denied in *Carter* as the witness despite being told he was 'correct' unequivocally identified him" and the court found that there was more than an adequate independent basis.") *Id* at [599-600]

8.) This is not a case like *Carter*, nor are the circumstances in *People v Martin*, 2018 Mich App Lexis 274 (*22) present, where the high court more recently found, "There is no record support of an officer assuring the witness he was correct." *No. 1 at bar*, (taken) *AP Towns* put on record where the officer told love he picked "the right person" herself. (TT, 11/3/10, 88)

9.) The entire globe knows, "eyewitness misidentification is the 'single most contributing factor' leading to wrongful convictions in our nation." *United States v Brownlee*, 454 F.3d 131, 141-142 (3rd Cir. 2006); see also Chris Conway's: "The DNA 200" *New York Times* (May 20, 2007) ("Reporting on the first (3)

200 inmates cleared on the strength of DNA evidence and noting: "Three quarters" of the convictions were marred by inaccurate "eyewitness identification.")

10.) From the get-go, this case shouted or blared a case of wrongful charges. One of the nations top government Agency - The FBI - Alerted the Wayne County prosecutors of exculpatory admissions they obtained on the Defendants behalf. The Federal Bureau of Investigations brought forth one of their top informants - Christopher Richardson - who revealed to them, his very own cousin, William Beal and federally charged co-defendant Tyree Washington were the two culprits actually responsible for the crimes at bar. see (EH, 7/21/10, 4-19) Just as scripture says: What is done in the dark, will come to light. This red flag was tossed out and in an attempt to buttress these proofs, Ewing hastily submitted to a polygraph examination and without a doubt ACED it with flying colors. (Exhibit B) Ray Charles CAN see that the tainted photo line-up conducted in this case led to a classic case of misidentification.

11.) Indeed, All identifications of Mr. Love should be suppressed, as our Supreme Court long ago pronounced, "Witnesses may be likely to base later identifications of a suspect upon the tainted photo-show, rather than on his/her own recollection of the crime." People v Korylczyk, 493 Mich 289, 321 (1993): see also
(4)

People v Gray, 457 Mich 107, 11-15 (1998) ("courts must guard against this danger of allowing the substantial likelihood of irreparable misidentifications into trials.")

Independent Source:

12.) Where the pre-trial identification was unduly suggestive, it has been made clear that "the witness will not be able to make an in-court identification unless the prosecution can show that there is an independent source for the identification." People v Kachar, 400 Mich 78 (1977) Here the prosecution cannot meet the muster, just consider:

A.) Raymond Love swore he was "guessing" at the defendant's face when he selected the photo. This he told directly to AP Towns. (TT, 11/3/10, 85)

B.) Mr. Love made it clear, "I was never 100% sure." (PE, 2/3/10, 121) (TT, 11/3/10, 5-10).

C.) He let it be known, "I picked the photo of the guy" who looked like the shooter "compared to all the guys in the photo display." And again, he let this fact be known directly to the prosecution. Id at 14. This testimony here make it plain, Love's identification was not
(5)

independent, nor even based on what he observed on the day of the incident. No, his selection was exclusively made in comparison to all other four photos, as he had already been told he made the wrong selection.

D.) Weigh, Love testified he only got to view the shooter's face for "A few brief seconds." (PE, 2/3/10, 89)

E.) This witness further assured the jury, "Looks close" is not the same as "that's him!" (TT, 11/2/10, 197)

F.) It must be restated, Mr. Love swore that his "first immediate selection was photo number two," a photo not of Mr. Ewing. (TT, 11/3/10, 18-19)

G.) Further, he let it be known "I never knew or saw the shooter before that day." (TT, 11/2/10, 167)

H.) Love swore the shooter had "a trimmed beard." (TT, 11/3/10, 90) However, and noteworthy, this defendant couldn't even grow a beard nor goatee at the time. The state present ONE photo saying the opposite out of all the Facebook photos gathered, this court CAN deny this motion. Sadly, and more so a black eye to the justice system... the defense can present numerous photos of Tyree Washington with a trimmed beard since his teens.

I.) LOVE I.d lacks further Accuracy of this Defendant's Appearance. NOTE: Ewing's Nickname is "Apple" as Everyone knows him since birth as the boy with the "Humongous Apple sized head." Yet, not once has Raymond described the suspect as having a "big head." An easily discernible feature of Ewing.

J.) Lastly, Mr. Love Attested "I viewed the shooter through the rearview mirror," this while leaning over and his wife. A view the prestige Michael Hathaway slammed as "virtually impossible." (E.H., 10/24/18, 8) This Court's predecessor noted the self-same. (T.T., 11/18/16, 76) ("While I certainly believe there is some credibility issues.") And the Court of Appeals echoed the same issue on appeal see *People v Searcy*, 2026 Mich Lexis 7102, [*24] ("It was clearly a question about the reliability of the loves observations.") Hence, this is NOT A situation as in *Carter* at 608, where the Court found "An independent basis. This testimony must be stricken, as Raymond Love as argued at three was told the suspect in the lineup, combined with the clear taint and suggestive show-up that transpired, rendering his I.d inadmissible. *People v Swayer*, 222 Mich App 1, [*3] ("being told suspect was in the lineup alone does not render it unduly suggestive.")

Relief Sought

For these reasons Ewing prays that this diligent Court will order the suppression of:

A.) Any reference to the pre-trial identification of the Defendant by all witnesses who were involved in the improper pretrial identification!

And

B.) The in-court identification of Ewing by Raymond Love, as the record is clear — his identification is the product of an improper pretrial identification.

Notably, Ewing submitted to a polygraph exam with DPP's former decorated detective, Andrew Sims. He was probed about issues concerning this very motions:

1.) December 29, 2009, Are you lying when you say you did not fire any of those shots at those guys in that van in the area of Harper and Van Dyke?

Answer: No!

2.) December 29, 2009, Was you present at Harper and Van Dyke, when those shots were fired into that van?

Answer: No! (see exhibit)

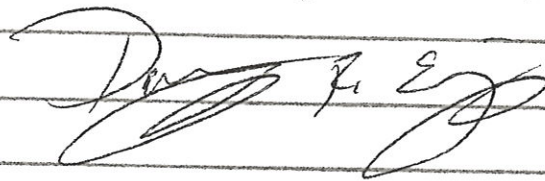
The Defendant Aced the exam. He's not the suspect.

Wherefore, this just and thorough court should "consider these results in deciding" this motion. People v Hawkins, 2012 Mich App Lexis 2157, [*87] ("Polygraph results are Admissible in pre and post trial motions, including motions to suppress evidence.")

Ewing believes the record is clear and incontestable and thus a Wade hearing will not be needed — the record speaks for itself. However, this court at its discretion or in the alternative can opt for such a hearing.

Respectfully & Humbly Submitted

Wrongfully Convicted
Now Again Charged



cc: File Court, AP, Sinclair

Exhibit A
(Raymond's statement)

Witness contact information

- Walk-in to police facility
- Conveyed by a DPD member (Document on Witness Conveyance Form)
- In Field/At Scene

STATEMENT FORM
 WITNESS INTERROGATION
 CASE PROGRESS

FILE/CASE NO. 09-405

DISTRICT/COMMAND		Homicide		J.B. WATSON	
TE	TIME STARTED	TIME ENDED	PLACE	STATEMENT TAKEN BY	
12-30-09	5:15 P	5:48 P	S.W.D	Brooks	
WITNESS		RACE / SEX / AGE		D.O.B.	HGT.
Raymond Love		41MB		5-12-68	5'8
SOC. SEC. NO.		RESIDENCE		PHONE	WGT.
XXXXXXXXXX		13928 Mitchell		XXXXXXXXXX	165
EMPLOYER		DEPARTMENT		BUS. RES.	BADGE NO.
Laid-off				XXXXXXXXXX	XXXXXXXXXX
RESIDING WITH:		CHILDREN/ SCHOOL:		SHIFT	
wife					
RELATIVES/ FRIENDS:		ADDRESS		PHONE	
REVIEWING SUPERVISOR/NAME & RANK:		SIGNATURE OF SUPERVISOR -		DATE & TIME OF SUPERVISORY REVIEW:	
4 Charles Brooks		[Signature]		12-31-09 8:30 A	

Q MR LOVE I'VE SHOWN YOU A PHOTOGRAPHIC LINE OF 6 BLACK MALES IS THAT CORRECT
 A YES
 Q MR LOVE YOU POINTED TO #5 AND SAID "HE LOOKS CLOSE" IS THAT CORRECT
 A YES
 Q MR LOVE THE INDIVIDUAL THAT YOU SAID "LOOKS CLOSE" EXPLAIN TO ME WHAT YOU OBSERVED #5 DOING ON THE DAY OF THE SHOOTING
 A GETTING OUT OF THE BACK SEAT, (PASSENGER SIDE) OF A TURQUOISE I KNOW IT WAS A GENERAL MOTORS PRODUCT HE WENT IN FRONT OF THE CAR THAT HE HAD GOTTEN OUT OF AND STARTED JOGGING SLOWLY TOWARDS THE BACK OF THE MINI VAN HE RAISED HIS GUN UP AND I HEARD FOUR TO FIVE SHOTS
 Q WHAT KIND OF GUN DID THIS GENTLEMAN RAISE UP
 A IT KINDA LOOKED LIKE A GMM, IT WAS BLACK
 Q COULD YOU TELL IF IT WAS IN HIS LEFT HAND OR RIGHT HAND
 A IT WAS IN HIS RIGHT HAND
 Q WHAT WAS HE SHOOTING AT
 A THE BACK OF THE MINI VAN, (1) BULLET HIT

X Raymond Love Dec. 30, 2009

5:48

Exhibit B
(Polygraph Results)

SIMS CONSULTING SERVICE, LLC
Andrew C. Sims Forensic Polygraph Examiner
P.O. Box 34531
Detroit, Michigan 48234
Office: 313-550-7014
Fax: 313-305-3258

04-29-10

Nature of Offence: Fatal Shooting

Date of Examine: 04-29-10

Person Examined: Darrell Ewing

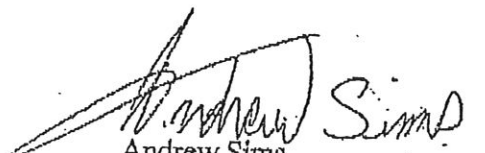
DOB: 11-18-88

Test Questions:

1. December 29 2009, are you lying when you say you did not fire any of those shots at those guys in that van in the area of Harper and Van Dyke?
2. December 29 2009, at Harper and Van Dyke did you fire any of those shots at those guys in that van?
3. December 29, 2009 was you present at Harper and Van Dyke, when those shots were fired into that van?
4. December 29, 2009, at Harper and Van Dyke did you plan or participate in the shooting of those guys in that van?

Report:

Based on the examination given, it is the opinion of the examiner that the subject is being Truthful regarding this issue.


Andrew Sims
Forensic Polygraph Examiner