

**STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT
- CRIMINAL DIVISION -**

THE PEOPLE OF THE STATE OF MICHIGAN,

v.

**Case No. 10-001495-01-FC
Hon. Kiefer Cox**

**DERRICO DEVON SEARCY,
Defendant.**

The People of the State of Michigan
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MOTION TO EXCLUDE IDENTIFICATION

Mr. Searcy, by and through his attorney and pursuant to the due process clause of the federal and state constitutions, requests this Court exclude from evidence the results of a photographic identification conducted on

FACTS

1. Mr. Searcy is charged by information with Count 1: Homicide – Murder First Degree – Premeditated, Count 2, 3, and 4: Assault with Intent to Murder, Count 5: Weapons – Firearms Possession by Felon, Count 6: Weapons Felony Firearm, and Count 7: Homicide – Murder – Second Degree.
2. Two days after the shooting Raymond Love went to the police station, where he identified Mr. Searcy in a photo lineup. Daubert Motion, Ex. A, Bates No. 1046-1047.
3. On January 13, 2010, a sheriff's deputy named Anthony Robinson spoke with Mr. Searcy at the

Wayne County Jail. Daubert Motion, Ex. A, Bates No. 1306. Dep. Robinson testified that Mr. Searcy refused to participate in a live line-up. On January 13, 2010, Mr. Searcy already retained counsel, Mr. Otis Culpepper. The deputy did not inform Mr. Searcy that he would have the right to have counsel present for a live line-up. Ex. A, Bates 1310-1311.

4. Based on Mr. Searcy's uninformed and uncounseled refusal to participate in the lineup, the Detroit Police conducted a second photographic array identification again with Mr. Raymond Love on January 14, 2010. Ex. A, Bates 1623-1624.
5. The photographic array shown to Raymond Love was unduly suggestive. However, this photo array has not been disclosed to counsel.

ARGUMENT

I. THE PHOTO ARRAY IDENTIFICATION WAS IMPERMISSIBLY SUGGESTIVE, CONDUCTED IN VIOLATION OF MR SEARCY'S RIGHT TO COUNSEL, AND NOT RELIABLE

The right to counsel attaches to corporeal "identifications conducted at or after the initiation of adversarial judicial criminal proceedings." *People v. Hickman*, 470 Mich. 602, 609 (2004). Once the right to counsel has attached, state agents cannot conduct identification procedures unless counsel is present. Here, the Wayne County Sheriff, on January 13, 2010, attempted to speak to Mr. Searcy regarding participating in a line-up without counsel present. Charges had already been initiated, and Mr. Searcy had a right to counsel, and in fact had counsel. *Moore v Illinois*, 434 US 220 (1977). Mr. Searcy was entitled to the benefit of counsel to make the decision regarding participating in a lineup—Mr. Searcy could not waive his right to a critical stage of the proceedings without the advice of counsel. *See United States v. Wade*, 388 U.S. 218 (1967); *Escobedo v Illinois*, 378 US 478, 479 (1964). As such, the photographic array

that was conducted because of the unknowing waiver of Mr. Searcy's right to participate in a lineup is excludable as a fruit of that violation.

Separately, a photographic array procedure cannot be unduly suggestive. *United States v. Wade*, 388 U.S. 218 (1967). Here, where a photographic array was conducted once already, an arrest had been made based on the previous photographic array, a second photographic array is unduly suggestive. "An in-court identification following an unnecessarily suggestive out-of-court law-enforcement procedure implicates a defendant's due-process rights because of the involvement of improper state action." *People v Posey*, No. 162373, 2023 WL 4873422, at *10 (Mich, July 31, 2023).

This Court should hold an evidentiary hearing regarding the myriad unusual and suggestive events that predated the administration of the photographic arrays in this case. Without disclosure of the content of the second photographic array, the prosecution cannot meet its threshold burden to admit this evidence.

WHEREFORE, for the reasons stated herein, the defense asks the Court grant this motion.

Respectfully submitted,

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