NO. 45099-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

BRIAN DAVID THOMPSON,

Appellant.

RESPONDENT'S BRIEF

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II. ISSUES PERTAINING TO THE STATE'S RESPONSE TO THE ASSIGNMENT OF ERROR

A. **Did Thompson suffer ineffective assistance of counsel when his attorney chose not to move to suppress a show-up identification of Thompson made within minutes of the commission of the crime and there was a large quantity of evidence independent of this identification that pointed to Thompson as the burglar?**

B. **May Thompson challenge the identification as a due process violation on direct appeal when he did not object to its admission at trial or provide legal authority to explain how this issue may be raised for the first time on appeal?**

III. STATEMENT OF THE CASE

Larry Wood was the owner of Wood & Wood Storage located off of 38th Avenue in Longview. RP at 41.[1] In February of 2013, Wood permitted one of the renters of his storage units, Timothy McCormack, to sleep in the unit that he rented overnight. RP at 48. Part of Wood's

[1] Thompson provided the report of proceedings in three separate bound volumes. Each of these bound volumes begins its page numbering at "1." However, all of the testimony in this case occurred on June 13, 2013, and is contained in a single bound volume transcribing the proceedings on this date. Unless designated with a different date, all citation to the report of proceedings in this brief refers to the June 13, 2013 bound volume.

reasoning for allowing McCormack to stay there was because McCormack had a pit bull, Spike, who would provide additional security to the facility. RP at 19, 48.

At around 2:20 a.m. on February 13, 2013, McCormack was sleeping inside the storage unit. RP at 21. McCormack was awakened by the door to his unit being flung open. RP at 22. Spike exited the unit and McCormack followed him, concerned that his dog was going to "eat somebody." RP at 23. Once McCormack exited the unit, he observed his dog just outside his unit about four or five feet from Brian David Thompson, who was staring back at Spike. RP at 23. The outside of the storage unit was lit by one of several a 400-watt, fluorescent lights at the facility that gave light similar to a "blue lamp." RP at 22, 65. Face-to-face with Thompson, McCormack observed that he was skinny, around 5'10" tall, and had a really white complexion. RP at 23, 24. McCormack also observed that Thompson was wearing a dark-colored stocking cap that McCormack believed to be dark green. RP at 23. McCormack estimated that he stared at Thompson for four seconds, grabbed his dog, and then observed Thompson for another three seconds until Thompson turned and ran. RP at 24. McCormack did not have any vision problems, was not on any kind of medication, and had not used drugs or alcohol. RP at 24.

Thompson ran around the corner of the unit, and McCormack followed. RP at 25. When McCormack went around the corner he observed that a hole had been cut in the cyclone fence that surrounded the facility. RP at 25, 46-47. This hole had not been in the fence when McCormack entered his unit to sleep the night before. RP at 20-21. McCormack retrieved a leash for Spike, exited the facility through the hole, walked about 20 feet down the sidewalk, and called 911. RP at 26. McCormack made the phone call about two and a half minutes after Thompson left. RP at 26. McCormack provided a description of Thompson to the police. RP at 27. Police arrived at the location approximately two minutes later. RP at 27, 114. Four minutes from the time of McCormack's call, Officer Tory Shelton of the Longview Police Department located Thompson. RP at 143.

Officer Shelton located Thompson across the street from Wood & Wood Storage. RP at 114. When Officer Shelton observed Thompson he noticed that he matched the description provided by McCormack. RP at 115. Officer Shelton noted that Thompson was a white male, with a thin build, wearing a dark stocking cap, and was the same height as McCormack had described. RP at 115. Officer Shelton observed the color of Thompson's stocking cap to be black. RP at 115. Officer Shelton contacted Thompson at around 2:23 a.m. RP at 143. After an additional

search of the area was conducted by other police officers, no one else was located. RP at 145, 152, 155.

When Officer Shelton asked Thompson for identification, Thompson provided him with an identification card for John Gehring. RP at 116. Thompson was wearing a backpack. RP at 117. Officer Shelton asked Thompson what was in the backpack. RP at 118. Thompson showed Officer Shelton the items in the backpack, which included a couple of saws, a couple pairs of pliers, a full-faced ski mask, and a pair of gloves. RP at 118. Officer Shelton discovered there was a warrant for John Gehring, and believing Thompson to be John Gehring, he arrested Thompson and placed him in the back of his patrol car. RP at 119, 137.

Officer Shelton took Thompson to the main access gate for Wood & Wood storage where he met with McCormack. RP at 119. Thompson was located within five minutes of the police arriving at Wood & Wood Storage and brought to McCormack. RP at 27. McCormack did not observe Officer Shelton arrest Thompson, rather he first observed Thompson when Officer Shelton brought him to the fence line. RP at 37. Officer Shelton had Thompson step out of his patrol car so McCormack could look at him. RP at 27. Thompson's hands were handcuffed behind him. RP at 36, 146. McCormack recognized Thompson as the same man that he had seen outside his storage unit a few minutes earlier. RP at 28.

He also observed that he was wearing the same stocking cap that he had seen him in earlier. RP at 28. McCormack identified Thompson to Officer Shelton as the man he had seen earlier. RP at 119.

After McCormack identified Thompson, he watched the police search Thompson. RP at 39. After this search, the police informed McCormack that Thompson had been in possession of wire cutters. RP at 40.

Officer Shelton spoke with Thompson, who denied involvement in the burglary. RP at 119. Thompson told Officer Shelton that he had been walking from his truck, which had run out of gas. RP at 119-20. Officer Shelton accompanied Thompson to a GMC pickup truck that was backed off the road. RP at 132, 134. The ignition to the truck had been pulled from the dashboard and was hanging down by wires. RP at 133, 169. Thompson was in possession of Ford keys which he said he had used to start the truck. RP at 133. Using one of these Ford keys Officer Shelton was able to start the truck. RP at 133. Thompson was taken to the jail where it was discovered that he was not John Gehring. RP at 137. At the jail, Thompson admitted to being Brian David Thompson. RP at 137.

The following day it was discovered that the truck had been stolen from a nearby car lot. RP at 77-82, 88. To access the car lot, the lock that was on the gate had been removed. RP at 82-84. The keys to the truck

were still in the possession of the car lot owner, Monty Lewellen. RP at 77, 87-88. At Wood & Wood Storage, the lock that had been on the unit next to McCormack's was found cut off and on the ground.[2] RP at 69-71, 126-27, 168. The lock looked like it had been cut with bolt cutters. RP at 71. After a search warrant was obtained, police searched McCormack's backpack. RP at 175. The backpack contained a tag for 18" bolt cutters, gloves, a pair of channel lock pliers, a slingshot, two hacksaws, two ski masks, wire cutters, an "L-shaped" screwdriver, a socket wrench, and a bent metal clothes hanger that was unfolded and twisted with a hook on the end, as if it could be used to open a vehicle door. RP at 175-77, 180.

At trial, McCormack identified Thompson as the man who he had confronted outside his storage unit. RP at 28. McCormack also testified that Thompson had been wearing a dark green stocking cap when he observed Thompson outside the storage unit, and that Thompson was wearing this same stocking cap when he identified him for the police. RP at 23, 28. At the conclusion of the jury trial, Thompson was convicted of Burglary in the Second Degree, Criminal Impersonation in the First Degree, and Possession of a Stolen Vehicle. RP (June 14, 2013) at 125.

[2] This unit was being rented by Perry Kesler who testified at trial. RP at 67-68.

A. Thompson did not suffer ineffective assistance of counsel.

Thompson did not receive ineffective assistance of counsel when his attorney chose not to file a motion to suppress that would have failed; further there was a legitimate trial strategy for using the show-up identification as part of Thompson's defense, and Thompson did not suffer any prejudice. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that prejudice resulted from that deficiency. *Strickland v. Washington*, 446 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Thomas*, 109 Wn.2d 222, 225, 743 P.2d 816 (1987). Thus, one claiming ineffective assistance must show that in light of the entire record, no legitimate strategic or tactical reasons support the challenged conduct. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995). Prejudice is not established unless it can be shown that "there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 335.

Whether counsel is effective is determined by the following test: "[a]fter considering the entire record, can it be said that the accused was afforded an effective representation and a fair and impartial trial?" *State*

v. Jury, 19 Wn.App. 256, 262, 576 P.2d 1302 (*citing State v. Myers*, 86 Wn.2d 419, 424, 545 P.2d 538 (1976)). Moreover, "[t]his test places a weighty burden on the defendant to prove two things: first, considering the entire record, that he was denied effective representation, and second, that he was prejudiced thereby." *Id.* at 263. The first prong of this two-part test requires the defendant to show "that his . . . lawyer failed to exercise the customary skills and diligence that a reasonably competent attorney would exercise under similar circumstances." *State v. Visitacion*, 55 Wn.App. 166, 173, 776 P.2d 986, 990 (1989) (*citing State v. Sardinia*, 42 Wn.App. 533, 539, 713 P.2d 122, *review denied*, 105 Wn.2d 1013 (1986)). The second prong requires the defendant to show "there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *Id.* at 173.

1. The show-up identification of Thompson was not impermissibly suggestive and did not give rise to a substantial likelihood of irreparable misidentification; therefore a motion to suppress would have failed.

Because the show-up identification of Thompson was not impermissibly suggestive and did not give rise to a substantial likelihood of irreparable misidentification, Thompson's attorney was not ineffective when he chose not to file a motion to suppress. An out-of-court

identification "meets due process requirements if it is not so impermissibly suggestive as to give rise to a substantial likelihood of irreparable misidentification." *See State v. Linares*, 98 Wn.App. 397, 401, 989 P.2d 591 (1999) (analyzing a photographic identification procedure) (citing *State v. Vaughn*, 101 Wn.2d 604, P.2d 878 (1984)), *review denied*, 140 Wn.2d 1027, 10 P.3d 406 (2000). Thus, to prevail in a motion to suppress the identification, Thompson would have been required to show two things. First, as a threshold matter, Thompson was required to show the identification was "impermissibly suggestive." Second, after meeting this threshold question, Thompson would then have needed to show the impermissibly suggestive identification necessarily gave rise to a "substantial likelihood of irreparable misidentification." Because Thompson would not have succeeded in establishing either of these requirements, a motion to suppress the identification would have failed.

To determine whether an out-of-court identification is "so impermissibly suggestive as to give rise to a substantial likelihood of irreparable misidentification" requires the application of a two-part test. *State v. Birch*, 151 Wn.App. 504, 514, 213 P.3d 63 (2009) (citing *State v. Vickers*, 148 Wn.2d 91, 118 59 P.3d 58 (2002)). First, the defendant has the burden of showing that the identification procedure was impermissibly suggestive. *See Vic*kers, 148 Wn.2d at 118 (citing *Linares*, 98 Wn.App. at

401). If the defendant fails to show that the identification procedure was impermissibly suggestive the inquiry ends. *Id.* (citing *Vaughn*, 101 Wn.2d at 609-10). If the defendant meets this burden "the court then considers, based on the totality of the circumstances, whether the procedure created a substantial likelihood of irreparable misidentification." *Id.* (citing *Linares*, 98 Wn.App. at 401).

Practical realities require police to utilize show-up identifications when investigating certain crimes. Show-up identifications are typically used when police show a suspect to a witness or victim shortly after the crime has occurred. *Birch*, 151 Wn.App. at 514. "Show-up identifications are not per se impermissibly suggestive." *Id.* (citing *State v. Guzman-Cuellar*, 47 Wn.App. 326, 335, 734 P.2d 966 (1987)). Generally, a show-up identification held shortly after a crime and in the course of a prompt search for the suspect is permissible. *State v. Springfield*, 28 Wn.App. 446, 447, 624, P.2d 208 (1981), *overruled in part on other grounds by State v. Freeman*, 153 Wn.2d 765, 108 P.3d 753 (2005). Further, the facts alone of a defendant having been handcuffed and standing near a police car during a show-up identification are "insufficient to demonstrate unnecessary suggestiveness." *Guzman-Cuellar*, 47 Wn.App. at 336 (citing *United States v. Hines*, 455 F.2d 1317 (D.C.Cir.1971)).

If a defendant meets the threshold question of demonstrating that a show-up identification was "impermissibly suggestive," the defendant must then show that as a consequence there was a "substantial likelihood of irreparable misidentification." *See Vickers*, 148 Wn.2d at 118. The court then reviews the "totality of the circumstances to determine whether the suggestiveness created a substantial likelihood of irreparable misidentification." *State v. Fortun-Ceba*, 158 Wn.App. 158, 170, 241 P.3d 800 (2010) (citing *State v. Maupin*, 63 Wn.App. 887, 897, 822 P.2d 355 (1992)). "The key inquiry in determining the admissibility of the identification is reliability." *State v. Rogers*, 44 Wn.App. 510, 515-16, 722 P.2d 1349 (1986) (citing *Manson v. Brathwaite*, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2 140 (1977); *State v. Booth*, 36 Wn.App. 66, 70, 671 P.2d 1218 (1983)). To determine reliability the courts consider the factors set out by the United States Supreme Court in *Manson v. Brathwaite*. *See Fortun-Ceba*, 158 Wn.App. at 170 (referencing *Brathwaite*, 432 U.S. at 114). The factors to be considered are: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the prior description of the criminal, (4) the level of certainty demonstrated at the confrontation, and (5) the time between the crime and the confrontation. *Brathwaite*, 432 U.S. at 114

(citing *Neil v. Biggers*, 409 U.S. 108, 93 S.Ct. 375, 43 L.Ed.2d 401 (1972)).

Here, Thompson fails to demonstrate that the identification was impermissibly suggestive. Thompson asserts that McCormack saw him exit a patrol car wearing handcuffs. Thompson also claims that prior to being asked to identify him, McCormack observed the police search him and was told that Thompson had wire cutters in his possession.[3] However, McCormack testified that he did not observe the search until *after* he had identified Thompson. RP at 39. McCormack also testified that it was not until *after* this search that he was informed that Thompson had wire cutters.[4] RP at 40. Thus, at the time of identifying Thompson, McCormack had not yet observed the search or been informed that Thompson had wire cutters. Thompson's only remaining facts to support his claim that the identification was impermissibly suggestive are that he was handcuffed and exited a patrol car. However, just as in *Guzman-Cuellar*, simply being handcuffed and being seen near a police vehicle is "insufficient to demonstrate unnecessary suggestiveness." 47 Wn.App. at 336. Other than being seen in handcuffs and exiting the patrol car,

[3] In his brief Thompson refers to the wire cutters as "wire snips".
[4] This was evident during the trial, as demonstrated by Thompson's attorney's closing argument where he asserted that by telling McCormack about the wire cutters after the identification the police cemented in his mind that he had identified the correct person. RP (June 14, 2013) at 101.

Thompson does not cite any other facts that influenced McCormack prior to identifying him. For this reason, he has failed to demonstrate that the show-up identification was impermissibly suggestive.

Additionally, even if the identification were to be considered impermissibly suggestive Thompson fails to show that it created as substantial likelihood of irreparable misidentification. This becomes evident when the *Brathwaite* reliability factors are applied. First, McCormack had a good opportunity to view Thompson at the time of the crime. Although their encounter was brief, McCormack had the opportunity to view Thompson face-to-face, not moving, in the light, from a very short distance. This occurred while Thompson was caught in a stare-down with McCormack's pit bull.

Second, McCormack's attention was directly focused on Thompson. Having just been startled by Thompson's intrusion, McCormack exited his storage unit and observed Thompson facing McCormack's direction and staring at his dog. Face-to-face with Thompson, McCormack testified that he stared at Thompson for four seconds, grabbed his dog, then stared at Thompson for another three seconds. RP at 24. When Thompson turned and ran, McCormack followed and called 911, providing further evidence that Thompson was the primary focus of his attention.

Third, the description provided was accurate. McCormack correctly described Thompson as skinny, having a really white complexion, wearing a dark stocking cap, and being about 5'10" tall. RP at 23. Thompson argues that this description was vague, because McCormack erred by describing Thompson's black cap as dark green and did not describe Thompson as having facial hair when Officer Shelton observed Thompson's face to have "scruff." However, the distinction between a dark green and a black stocking cap when viewed at night is a minor difference. It should also be noted that McCormack identified Thompson as having the same cap both when he first encountered him and when he identified him for the police. Thus, at both times he observed Thompson, McCormack perceived Thompson's cap to be dark green.[5] McCormack's omission of facial hair in his description when Officer Shelton observed "scruff" has minimal significance. It is common for men to have a slight growth of whiskers without having what would be considered a beard or moustache.

Fourth, McCormack was certain in his identification of Thompson. McCormack testified without equivocation that he identified Thompson for the police and that Thompson was the person he saw outside his

[5] It is possible that the effect of the apparent blue tint to the fluorescent lighting at Wood & Wood Storage caused the cap to appear dark green to McCormack when viewed at this location. RP at 22.

storage unit. RP at 27-28. McCormack also testified that when he identified Thompson, Thompson was wearing the same stocking cap that he had on when McCormack had observed him outside the storage unit. RP at 28. Months later in court, McCormack again identified Thompson as the person he saw. RP at 28. In court, McCormack noted that Thompson gained some weight since the burglary yet did not waver in his identification of Thompson as the person he had seen outside the storage unit.

Finally, there was a very short amount of time between the crime and the identification. McCormack testified that two and a half minutes after his encounter at the storage unit with Thompson he called the police. RP at 26. The police arrived two minutes later.[6] RP at 27, 114. McCormack estimated that five minutes after the police arrived they located Thompson and brought him to McCormack.[7] RP at 27. Thus, it appears that the identification occurred within 10 minutes of the crime. Courts have permitted show-up identifications that occurred after much longer time lapses. *See, e.g., Rogers*, 44 Wn.App. 516 (six hours between crime and identification); *Springfield*, 28 Wn.App. at 448 (17 hours

[6] The Longview Police demonstrated exceptional efficiency as Thompson was located by police four minutes after McCormack's call. RP at 143.

[7] Because McCormack did not observe Thompson's arrest, McCormack's estimate of when the police located Thompson appears to coincide with when he observed Thompson at the fence line of Wood & Wood Storage. RP at 37.

between crime and identification). The short time lapse provides an especially strong justification for a show-up identification here. First, with the event having just occurred McCormack's memory would have been clearest as to what he had observed less than 10 minutes earlier. Further, because Thompson matched the description provided and was the only person found in the immediate area at the time, it made sense to have the witness conduct an immediate identification of him to ensure that police had located and arrested the correct person. For these reasons, when the five-factor test of *Brathwaite* is applied, it shows the identification to be reliable. Therefore, in addition to the identification not being impermissibly suggestive, because there was no danger of irreparable misidentification a motion to suppress would not have succeeded.

2. Because his attorney's decision not to move to suppress the identification was a legitimate trial strategy it cannot serve as a basis for Thompson's claim of ineffective assistance of counsel.

Thompson has failed to show that his attorney's decision not to file a motion to suppress was not a legitimate trial strategy. "If trial counsel's conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel." *State v. McNeal*, 145 Wn.App. 352, 362, 37 P.3d 280 (2002). Trial counsel has "wide latitude in making tactical decisions."

State v. Sardinia, 42 Wn.App. 533, 542, 713 P.2d 122 (1986). "Such decisions, though perhaps viewed as wrong by others, do not amount to ineffective assistance of counsel." *Id.* (citing *Strickland v. Washington*, 446 U.S. 668, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674 (1984)). The appellate court should strongly presume that defense counsel's conduct constituted sound trial strategy. *State v. Barragan*, 102 Wn.App. 754, 762, 9 P.3d 942 (2000).

Here, there was a legitimate trial strategy for not moving to suppress the identification. With regard to the burglary charge, mistaken identity was the most reasonable defense to pursue. Had the show-up identification been suppressed, there was still a considerable amount of circumstantial evidenced identifying Thompson as the burglar. The description provide by McCormack was quite accurate, as it correctly identified Thompson as being skinny, 5'10" tall, having a very white complexion, and wearing a dark-colored stocking cap. In addition to matching this description, Thompson was the only person located in the area and the crime occurred around 2:20 a.m., when most people are at home sleeping. Further a search of his person revealed that Thompson had several tools that could be used to cut a fence including hacksaws, pliers, and wire cutters, as well as gloves, ski masks, and a tag for bolt cutters. The tag was especially incriminating because both the burglary

and the theft of the vehicle involved cutting locks. When questioned, Thompson lied about his identity. Thus, there is a high likelihood that on these facts the jury would have concluded Thompson was the burglar. By putting McCormack's identification of Thompson at issue, his attorney was able to highlight inconsistencies such as the color of the stocking cap and the omission of whiskers in his description to attempt to create reasonable doubt in the minds of the jurors as to the identity of Thompson as the burglar. Under these circumstances, Thompson's attorney employed legitimate trial strategy or tactics, therefore his decision not to file a motion to suppress cannot serve as a basis for a claim of ineffective assistance of counsel.

3. Because Thompson has not shown that he suffered prejudice as a result of his attorney's decision not to file a motion to suppress, his claim of ineffective assistance of counsel also fails.

Because Thompson has not shown that he suffered any prejudice his claim of ineffective assistance of counsel also fails. "Prejudice is established if the defendant shows that there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different." *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007) (citing *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)). Because a motion to suppress would have failed and

there was a legitimate trial strategy for not moving to suppress, Thompson fails to demonstrate that he suffered ineffective assistance of counsel. Additionally, he makes no showing of prejudice. Thompson matched the description provided, was the only person located in the area at 2:23 in the morning just minutes after the crime had occurred, lied about his identity when contacted, had a backpack full of tools used to cut locks and fences, and a tag for bolt cutters when both the stolen vehicle and burglary involved cutting locks. Consequently, Thompson fails to demonstrate that the outcome of the trial would have been any different had the identification been suppressed. Therefore, Thompson fails to show any prejudice.

B. Because Thompson did not object to or move to suppress the identification evidence at trial he may not raise the issue for the first time on appeal.

Because Thompson did not object to the admission of Timothy McCormack's out-of-court or in-court identifications of him at trial, he may not raise the issue for the first time on appeal. RAP 2.5(a) states "[t]he appellate court may refuse to review any claim of error that was not raised in the trial court." The Washington Supreme Court has stated: "This court has consistently held that, to preserve an alleged trial error for appellate review, a defendant must timely object to the introduction of the evidence or move to suppress it prior to or during the trial. Failure to

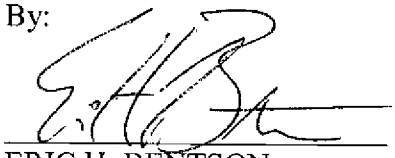
challenge the admissibility of proffered evidence constitutes a waiver of any legal objection to its being considered as proper evidence by the trier of the facts." *State v. Silvers*, 70 Wn.2d 430, 432, 423 P.2d 539 (1967). "The general rule in Washington is that a party's failure to raise an issue at trial waives the issue on appeal unless the party can show the presence of a 'manifest error affecting a constitutional right.'" *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 84 (2011) (quoting *State v. Kirwin*, 165 Wn.2d 818, 823, 203 P.3d 1044 (2009)). Under RAP 2.5(a), an error may be raised for the first time on appeal only for (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, or (3) manifest error affecting a constitutional right. Here, Thompson has failed to argue that any of the exceptions listed under RAP 2.5(a) apply. Accordingly, he may not directly challenge the admission of this evidence for the first time on appeal. Further, an out-of-court identification "meets due process requirements if it is not so impermissibly suggestive as to give rise to a substantial likelihood of irreparable misidentification." *Linares*, 98 Wn.App. at 401. For the reasons explained in Section A-1, the identification here did not violate due process. *See supra*, Section A-1.

IV. CONCLUSION

For the above stated reasons, Brian Thompson's convictions should be affirmed.

Respectfully submitted this 9th day of June, 2014.

SUSAN I. BAUR
Prosecuting Attorney

By: 

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on June 9th, 2014.

Michelle Sasser

Michelle Sasser

COWLITZ COUNTY PROSECUTOR

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