

CASE NO A14-137

NOV 18 2014

FILED

Mark T. Weems, being first duly sworn upon oath, deposes and states, that on the 18th day of **November, 2014**, he served by United States Mail:

upon:

by placing a true and correct copy of the documents in an envelope addressed to them at their respective above-listed addresses and depositing the envelope with sufficient postage in the U. S. Mail in the City of Richfield, State of Minnesota.

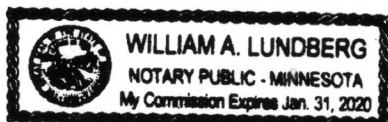
Subscribed and Sworn to before me
This 18th day of November, 2014. .

William A. Lualaba

Notary Public

Ed. T. Brown

Mark T. Weems
Process Server



OFFICE OF
APPELLATE COURTS

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CASE NO A14-137

**STATE OF MINNESOTA
IN SUPREME COURT
PETITION FOR FURTHER REVIEW OF DECISION OF COURT OF
APPEALS**

STATEMENT OF LEGAL ISSUES

The legal issue is whether the Court of Appeals properly effected the intent of the legislature in construing Minn. Stat. sec. 343.20, subd. 6 (2010), properly decided an whether a suppression hearing on the suggestive identification procedures used to identify physical evidence and other whether others procedure provided due process to the appellant.

CRITERIA RELIED ON IN SUPPORT OF PETITION

The criteria on which Petitioner relies is this case raises several issues of first impression of statewide concern that should be decided by the Supreme Court.

STATEMENT OF THE CASE

Petitioner was convicted of 13 counts of animal cruelty in violation of Minn. Stat. 343.21, subd. 7 (2010). She appealed her case to the Court of Appeal which affirmed the judgment of the District Court.

ARGUMENT

Minn. Stat. sec. 343.20, subd. 6 clearly intends to distinguish at least two classes of animals: those that are pets and those that are not. If an animal is a pet or companion animal, any cruelty inflicted on it is a

felony. The Court of appeals undermined the intent of the legislature by ignoring the provision of the statute by modifying the quality of its enjoyment as "as a pet or companion." The decision of the Court of Appeals ignored this critical qualification, for without it, all animals are pets or companion animals and any ill treatment would result in a felony. This is critical because it includes all livestock and subjects the entire agricultural industry in Minnesota to criminal liability for not abiding standards of care that apply to household pets. The telling feature of the Court of Appeals error is the resort to the platitude "a dog is man's best friend" as a substitute for legal analysis.

The Court of Appeals also misapplied the "alternative perpetrator rule" by conflating its requirement that a person give notice of the intent to admit such evidence with a prohibition on arguing the fair inferences from the state's own evidence that another person could have committed the crime. In essence, the Court of Appeals treated it not as a rule of notice to the state antecedent to the introduction of evidence a third party committed the offense, but a restriction of the most effective closing arguments that could be made to a jury.

Finally the Court of Appeals failed to vindicate the due process rights of the defendant by declining to apply it to the admission of

suggestive physical evidence by stating such a rule only applies to the identification of a defendant.

A conviction based on the mistaken identification of an inanimate object is just as intolerable as one based on the mistaken identification of a live one.

Neil v. Biggers, explained the scheme of suppression as:


Some general guidelines emerge from these cases as to the relationship between suggestiveness and misidentification. It is, first of all, apparent that the primary evil to be avoided is 'a very substantial likelihood of irreparable misidentification.' *Simmons v. United States*, 390 U.S., at 384, 88 S.Ct. at 971. While the phrase was coined as a standard for determining whether an in-court identification would be admissible in the wake of a suggestive out-of-court identification, with the deletion of 'irreparable' it serves equally well as a standard for the admissibility of testimony concerning the out-of-court identification itself. It is the likelihood of misidentification which violates a defendant's right to due process, and it is this which was the basis of the exclusion of evidence in *Foster*. Suggestive confrontations are disapproved because they increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous. But as *Stovall* makes clear, the admission of evidence of a showup without more does not violate due process.

There is no hint in these guidelines that the suppression of a suggestive identification is narrowly applicable to a person rather than an object. The repeated concern is for mistaken misidentification based upon police suggestion. In that, it is no different from asking the court to suppress a coerced statement under the due process clause because the coercion makes it unreliable and its admission might lead to a false conviction. In fact, the Court's guidelines are indifferent to *what* has been identified.

Rather, the reasoning is concerned exclusively with whether the *procedures* are suggestive enough to taint in-court identification where the procedure creates an unacceptable probability of a false conviction. That is what distinguishes it from a Fourth Amendment claim where suppression is mandated by the protection of personal privacy rights. Fourth Amendment suppression excludes extremely reliable evidence to deter police violation of personal privacy rights while Fifth Amendment due process suppresses unreliable evidence for both the particular result in a case and the general integrity of the truth-finding function. While the cases in which the rules against tainted in-court identification were developed from facts involving the suppression of identity or people, the *rules* that emerged from those facts are concerned exclusively with protecting a defendant not from the violation of his freedom to move around, to be free from a seizure, but from testimony that will lead to a faulty conviction. No case which decided against applying suppression to physical evidence tainted by suggestive procedures ever explains why it is somehow acceptable for the police to use suggestive procedures with physical evidence and not people when the end result is the same: a bad conviction. Some of the cases suggest that cross-examination is sufficient to protect defendants from the suggestiveness of procedures in respect of physical object. The same can be said of suggestive

identifications of people. There is no way to distinguish bad convictions from suggestive procedures by the animate or inanimate quality of the object. The standard for suppression, can be stated simply: whether extra-judicial *police procedures* taint the *judicial process* enough to risk a false conviction. When what happens *outside court* degrades something to where it no longer belongs *in court* the Court must exclude it.

11/14/14



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