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December 11, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2012AP930-CR

State of Wisconsin v. Jayme A. Manriquez (L.C. # 2003CF543)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Jayme Manriquez appeals a judgment of conviction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

Manriquez pled guilty to one count of aggravated battery. Before that, he moved to suppress an eyewitness identification of him that was made using a photo array. The court

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

denied the motion after an evidentiary hearing. On appeal, the parties agree that, under the applicable legal test, if the defendant establishes that the photo array was impermissibly suggestive, the burden shifts to the State to show that the identification was reliable under the totality of the circumstances. For purposes of this appeal, we assume, without deciding, that the array was impermissibly suggestive, and we focus instead on reliability.

We conclude that the State showed that the identification was sufficiently reliable. Without attempting to recite all the relevant facts here, the witness's opportunity to view the three attackers was adequate. Because of the witness's proximity to the attack, she obviously had her attention focused on the attack and the attackers, rather than being merely a casual or distant observer. Her initial description of the attackers, while differing from the ultimate identifications in certain details, was consistent in broader ways such as ethnicity and age. Furthermore, the circuit court found that the witness was familiar with Manriquez from having seen him before in the community. A witness's prior familiarity with a person increases the likelihood of identifying the person in a later encounter, even if brief.

Manriquez argues that the identification is unreliable because, when initially shown the photo array, the witness did not identify Manriquez as one of the attackers. Instead, she made the identification at a second showing of the array more than a week later. The witness testified that she could have made the identifications earlier, but that she did not because she did not want to be involved.

The circuit court appeared to accept that testimony as credible when it stated that the delay cannot be attributed to the conduct of the police, and referred to the witness as having "decided to cooperate." Manriquez points to various inconsistencies or ambiguities in parts of

the testimony that might create uncertainty about whether the witness was indeed able to identify Manriquez at the first showing of the array. However, we are satisfied that, given her prior familiarity with Manriquez and the explanation for her delay in making identifications credited by the circuit court, her ultimate identification of Manriquez was reliable.

IT IS ORDERED that the judgment appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals