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DISTRICT IV

October 22, 2014

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

2013AP2248-CR

State of Wisconsin v. Codrill W. Baker (L.C. # 2010CF315)

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

Codrill Baker appeals a judgment convicting him of distributing cocaine, distributing heroin, and first-degree reckless homicide for delivering the drugs that lead to a fatal overdose. He also appeals an order denying his postconviction motion in which he argued that the circuit court should have suppressed two witnesses' in-court identification of Baker as the man known as "Case," the supplier of the drugs. Upon our review of the parties' briefs and the record, we

conclude at conference that the judgment and order should be summarily affirmed. *See* WIS. STAT. RULE 809.21 (2011-12).¹

The victim died at Alicia Feinberg's apartment. Feinberg told investigating officers that a person she knew as "Case" supplied the drugs. After Detective Jed Seidl linked the name "Case" with Baker, he interviewed Feinberg. When Feinberg saw a photograph of Baker in the file, she pulled the photo from the file and told Seidl, "that's him, that's Case." Baker argues that exposing Feinberg to the single photo of Baker rather than using a photo array tainted her in-court identification of Baker as the person who supplied the drugs.²

Probation/parole agent Laura Luepke also identified Baker as the person known as Case. Luepke made a home visit to a probationer eleven days before the victim's death and, while there, met a man who introduced himself as Case. Luepke recognized Case when she saw him in a park on the day the victim died. Seidl emailed a photo of Baker to Luepke. Upon seeing that single photo, Luepke identified Baker as the person who identified himself as Case when they were introduced. Baker argues that showing Luepke the single photo of Baker tainted Luepke's in-court identification.

At the postconviction hearing, Feinberg and Luepke testified as to their prior contacts with Baker. Feinberg testified that she purchased drugs from Baker on numerous occasions in the two or two and one-half months preceding the victim's death and had seen his face at least five or six times. She testified,

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

² Feinberg testified that Baker's photo was one of two photos in the file.

There is no question in my mind I knew who he was. He was the man, the drug man, you know. He was the guy. You know who the guy is because if you don't know who the guy is, then you are going to suffer, you know, and you would know who the guy is.

Feinberg testified that when she saw the picture of Baker, she identified him as Case very quickly and “didn't have any doubts about who the man was. It was fairly easy.”

Luepke testified at the postconviction hearing that she saw Baker/Case on two occasions near the time of the overdose death. She took note of Case when he introduced himself at the probationer's residence because it was “standard protocol.” She testified: “We like to know who our offenders are hanging out with, who else is in the residence. Sometimes we will verify who they are just for our own safety.”

The circuit court found that both Feinberg and Luepke were sufficiently credible and reliable, and the court could rely on their respective abilities to identify Baker based on their prior contacts with him.

Baker argues that presenting a single photograph for identification is comparable to a “showup,” inadmissible under most circumstances by *State v. Dubose*, 2005 WI 126, 285 Wis. 2d 143, 699 N.W.2d 582. The State argues that *Dubose* does not apply to a photographic identification. We need not resolve that dispute, because the circuit court's findings of fact regarding the credibility of Feinberg and Luepke are not clearly erroneous and support the conclusion that each witness's in-court identification of Baker arose from an independent source, free of any taint.

Whether an in-court identification has been tainted by a prior suggestive identification is a question of constitutional fact, which is a mixed question of fact and law and requires a two-

part inquiry. *State v. Roberson*, 2006 WI 80, ¶25, 292 Wis. 2d 280, 717 N.W.2d 111. We sustain the circuit court’s historical or evidentiary findings of fact unless they are clearly erroneous. Whether the facts satisfy the relevant constitutional standard is viewed independently. *Id.*

Feinberg’s identification was based on multiple face-to-face meetings with Baker/Case over a period of approximately ten weeks before she saw the photo. As she explained, as a drug addict, she had a strong incentive to be able to identify her drug dealer. Baker argues that Feinberg’s identification and memory were not trustworthy because of Feinberg’s use of drugs. However, the circuit court’s finding that Feinberg had adequate untainted opportunity to become familiar with Baker/Case is not clearly erroneous.

Likewise, Luepke’s in-court identification of Baker as Case was based on an independent, taint-free source, namely, her two prior encounters with him. She considered it a part of her job to identify individuals who associated with her probationer clients. Her in-person contact with Baker/Case at the probationer’s residence, reinforced by seeing him in a park, showed her familiarity with him, which provided an independent source for the in-court identification.

IT IS ORDERED that the judgment and order are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals