

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 448 – 2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
JUSTIN FOGEL,	:	
Defendant	:	Suppression motions

OPINION AND ORDER

Before the Court are Defendant’s Motion to Suppress Identification, filed April 9, 2007, Motion to Suppress Arrest and Physical Evidence, filed May 21, 2007, and Motion to Suppress Oral and Written Statement, also filed May 21, 2007. A hearing on the motions was held August 31, 2007.

Defendant has been charged with burglary and related charges in connection with an incident on January 27, 2007, in which an armed intruder entered a residence and confronted two individuals who later identified him from a photo array. In the instant Motion to Suppress Identification, Defendant contends the identification procedure was unduly suggestive, and seeks to exclude from introduction at trial any evidence thereof.

A photographic identification procedure will be deemed unduly suggestive if, under the totality of the circumstances, the identification procedure creates a substantial likelihood of misidentification. Commonwealth v. Harris, 888 A.2d 862 (Pa. Super. 2005). Photographs utilized in lineups will not be deemed unduly suggestive if the suspect's picture does not stand out more than those of the other individuals included in the array and the people depicted in it all exhibit similar facial characteristics. Id. In the instant case, the prosecuting officer testified that he created an 8-person array by scanning a photograph of Defendant into a computerized system which then chooses other photographs which show persons with similar features. The officer chose seven of those photographs and the computer then arranged them into the array. The Court has reviewed such and does not believe Defendant’s photograph stands out any more than the others. Further, the officer testified that he did not indicate to either of the victims which photograph was of the “suspect”, nor even that the array contained a photograph of

someone who was a “suspect”. The Court thus finds the identification procedure was not unduly suggestive, and that Defendant is not entitled to relief. His motion to suppress the identifications will therefore be denied.

With respect to the motions to suppress arrest and physical evidence, and to suppress oral and written statements, defense counsel indicated at the conclusion of the hearing that he was making no argument in pursuance thereof. Those motions will accordingly be denied as well.

ORDER

AND NOW, this 7th day of September 2007, for the foregoing reasons, Defendant’s motions to suppress are hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
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Hon. Dudley Anderson