

Texas Code of Criminal Procedure.

3. Defendant's identification, under the totality of circumstances, was so unreliable and unnecessarily suggestive as to violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and due course of law, guaranteed by Article I, §§ 13 and 19 of the Texas Constitution. This, in turn, requires the Court to consider the witness's opportunity to view, degree of attention, accuracy of description, level of certainty, and the time between the trial and the confrontation. *See Manson v. Brathwaite*, 432 U.S. 98, 114 (1977).

4. Any other constitutional bases exist which would require suppression of the identification evidence in this case.

III.

Defendant is entitled to an identification hearing under Texas law. *See Martinez v. State*, 437 S.W.2d 842, 848 (Tex. Crim. App. 1969); *accord Franklin v. State*, 606 S.W.2d 818, 852 (Tex. Crim. App. 1979); *see also* Tex. R. Evid. 104(c).

IV.

If this hearing discloses that the identification procedures employed in this case were unconstitutional, defendant moves to suppress the associated identification testimony, outside the presence and hearing of the jury, and requests that these objections be deemed to apply if the evidence is admitted before the jury, without the necessity of repeating those objections. *See* Tex. R. App. Proc. 52(b).

V.

Defendant requests that this Court make written findings of fact and conclusions of law regarding the admissibility of identification testimony in this case.

WHEREFORE, PREMISES CONSIDERED, defendant moves for a hearing on the admissibility of identification testimony in this case, before trial and outside the presence of the jury, and, if this hearing discloses any unconstitutional or illegal identification procedures, defendant moves to suppress the resulting identification testimony.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of defendant's Motion For Identification Hearing Out Of Presence Of Jury has been delivered to the District Attorney's Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on this the 1st day of April, 2011.

MARK STEVENS

ORDER

On this the _____ day of _____, 2011, came to be considered defendant's Motion for Identification Hearing Out of Presence of Jury, and said motion is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING