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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

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THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

CLEON JAMES, :

Defendant-Appellant. :

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STATEMENT PURSUANT TO RULE 5531

1. The indictment number in the court below was 138/99.

2. The full names of the original parties were People of the State of New York against Cleon James, A/K/A James Cleon. There has been no change of parties on this appeal.

3. This action was commenced in Supreme Court, Queens County.

4. This action was commenced by the filing of an indictment.

5. This is an appeal from a judgment convicting appellant, after a jury trial, of robbery in the first degree, criminal possession of a weapon in the fourth degree, and criminal possession of stolen property in the fifth degree.

6. This is an appeal from a judgment rendered on September 22, 1999 (Demakos, J., at hearing; Dunlop, J., at trial and sentencing).

7. Appellant has been granted permission to appeal as a poor person on the original record. The appendix method is not being used.

PRELIMINARY STATEMENT

Appellant appeals from a judgment of the Supreme Court, Queens County, rendered on September 2, 1997, convicting him after a jury trial, of two counts of robbery in the first degree [P.L. § 160.15], criminal possession of a weapon in the fourth degree [P.L. § 265.01], and two counts of criminal possession of stolen property in the fifth degree [P.L. § 165.40]. Appellant was sentenced to consecutive determinate prison terms of 8 years each on the first-degree robbery counts, and concurrent terms of 1 year each on the fourth-degree criminal possession of a weapon count and the two fifth-degree criminal possession of stolen property counts. (Demakos, J., at hearing; and Dunlop, J., at trial and sentencing).

Appellant filed a timely notice of appeal, and on November 19, 1999, this Court granted him leave to appeal as a poor person and assigned Lynn W.L. Fahey as appellate counsel.

There were no co-defendants in the trial court.

No stay of execution has been sought. Appellant is currently incarcerated and serving his sentence.

QUESTIONS PRESENTED

1. Should the court have suppressed the complaining witnesses' identifications of appellant when those identifications were the result of an unduly suggestive police-arranged showup identification procedure during which the police told the complaining witnesses they had a man matching the witnesses' description of the robber in custody and then permitted the two witnesses to view Mr. James together?

2. Were Appellant's sentences of 8 years each on the two robbery counts, to be served consecutively, harsh and excessive given that he was an educated working man who had served four years in the Marine Corps and had never before been arrested, and that no one was injured during the crime?

STATEMENT OF FACTS

Introduction

Police Officer Kevin Brunner stopped Appellant Cleon James on the basis of his similarity to a description they had received of someone who had robbed two women a short time before. Upon hearing over the radio that a suspect had been detained, Officer Patrick Coyle, who was interviewing the two women told them that the police had arrested someone who matched the description they had given. He took both women to where Mr. James was being held in the presence of numerous police officers and patrol cars. When they arrived, Officer Brunner approached the car and asked one complaining witness whether she recognized anyone. When she responded "that's him," he turned to the other complaining witness and asked her the same question. She agreed, saying, "yes, that's him." The hearing

court denied the motion to suppress these showup identifications, ruling that neither Officer Coyle's remark nor the simultaneous viewing rendered the showup unduly suggestive.

Mr. James was convicted of two counts of robbery in the first degree and related misdemeanor stolen property and weapons counts. He graduated from high school, served in the United States Marines for four years, attended St. John's University, and had never before been arrested. Although neither complaining witness was injured, the sentencing court imposed two consecutive terms of 8 years for an aggregate 16-year sentence.

The Wade Hearing

At about 10:15 p.m. on January 7, 1999, Police Officer **KEVIN BRUNNER** heard a radio report of a robbery at 104th Street and 91st Avenue in Queens (W. 5-6, 7).[1] The report included a description of the robber as a black male, five feet seven or eight inches tall, wearing a red hat, a nose ring, and a Walkman (W. 6, 8). As Officer Brunner was canvassing the area, he heard a second radio report in which a dark jacket was added to the description of the robber (W. 8). Five to ten minutes later, Officer Brunner saw Mr. James, a black male who appeared to by five feet seven or eight inches tall, and who was wearing a red hat, a dark jacket and a nose ring, walking near the intersection of 96th Street and Jamaica Avenue (W. 9). He stopped Mr. James, and detained him for five minutes (W. 10).

Police Officer **PATRICK COYLE,** in response to a radio call about the robbery, went to the home of complaining witness Melanie Bourne (W. 34). As he was interviewing

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[1] Unprefixed numbers in parentheses refer to pages of the trial transcript. Numbers in parentheses preceded by "H" and "S" refer to pages of the Wade hearing and sentencing transcripts, respectively.

Ms. Bourne and the other complainant, Joanne Ortiz, he received another radio call (W. 38). He took the two complainants to 96th Street and Jamaica Avenue, telling them "some police officers had an individual stopped at that location and he fit the description of the person that robbed them" (W. 34).

When Officer Coyle arrived at 96th Street and Jamaica with the complainants about five minutes later, he met Officer Brunner, who approached the car (Brunner W. 10, 21; Coyle W. 35, 40). Mr. James was being held, wearing within 5 to 10 feet of Officer Coyle's car in the presence of numerous plain clothes police officers, about 5 uniformed officers and several police cars including one or two marked RMP's (Brunner W. 24). Officer Brunner "first asked Melanie if she recognizes anybody, and she right away pointed out" Mr. James by saying "that's him, that's him" (Brunner W. 11; Coyle W. 39). Officer Brunner then "looked over and spoke to Joanne Ortiz and asked her if she recognized anybody, and she said 'yes, that's him'" (Brunner W. 11; Coyle W. 39). Officer Brunner arrested Mr. James and searched him, recovering cash, two watches, a yellow bracelet, three earrings, a beeper, a blue-handled box cutter, a red knit hat and a Walkman (W. 11-12).

At the close of the hearing, defense counsel moved to suppress the showup identifications on the ground that Officer Coyle's remark rendered the showups unduly suggestive (W. 48-51). The court denied the motion (W. 54). Defense counsel then filed a written motion to reconsider the denial, arguing that, in addition to Officer Coyle's suggestive remark, permitting the two complaining witnesses to view Mr. James together, in each other's presence, was also unduly suggestive. Affirmation in Support of Motion to Reconsider, at

5-6. The People argued only that Mr. James was not entitled to reargument. Affirmation in Opposition at 1. The court again denied the motion, on the merits, ruling that

> contrary to Defense Counsel's contention, simultaneously held identifications are not *per se* impermissible (See, People v. Love, 1024; People v. Barnes, 219 A.D.2d 527), but rather are factually determined on a case by case basis.

Memorandum and Order of August 3, 1999.

The Trial

The People's Case

JOANNE ORTIZ and **MELANIE BOURNE** ended their evening of shopping and cocktails at the World Trade Center at about 9:15 p.m. January 7, 1999, and got on the J subway train at the Fulton Street station to go home to Richmond Hill, Queens (Ortiz 333-35, 355-60; Bourne 423-27). They noticed a black man wearing dark clothes, a red hat, a nose ring, and a Walkman get on at the same station and sit across from them (Ortiz 338-39; Bourne 427-28). He looked at them throughout their forty-to-sixty-minute trip from Manhattan to Richmond Hill (Ortiz 339, 360; Bourne 429), and got off the train with them at the 104th Street station (Ortiz 340; Bourne 431).

As they were walking toward Ms. Bourne's home, the man walked up in front of them, stopped them, and calmly said, "run all your shit or I'm going to cut you, give me your cell phone, give me your beeper, money" (Ortiz 343; see Bourne 432). Ms. Bourne saw that the man was holding a grey-handled box cutter (433), but Ms. Ortiz did not see him holding any weapon (369). Ms. Ortiz gave the man her gold link bracelet, Bulova two-tone watch, $70, and two gold hoop earrings (334). Ms. Bourne gave him a Motorola beeper, a silver

Benneton watch, and $60 (435). When the man walked away, Ms. Ortiz and Ms. Bourne hurried to Ms. Bourne's home and told her mother what had happened (Ortiz 372; Bourne 436). Ms. Bourne's mother then called 911 and reported the robbery (Ortiz 372; Bourne 437).

Police Officer Patrick Coyle drove to Ms. Bourne's home in response to the 911 call (Ortiz 346; Bourne 437). Ms. Ortiz and Ms. Bourne gave him a description of the robber and told him what had been taken (Ortiz 346; Bourne 438). Police Officer **KEVIN BRUNNER** essentially repeated his hearing testimony concerning his stop of Mr. James and the complaining witnesses' identification of him (Brunner 384-89; see Ortiz 347; Bourne 440).

Officer Brunner arrested and searched Mr. James (389). He recovered two watches, a bracelet, three earrings, a "knife," a beeper, a Walkman, and a red hat (389-91). Ms. Bourne recognized Mr. James's red hat and Walkman as those the robber had been wearing, and his "knife" as the one the robber had carried (Bourne 443, 445). She also recognized one of the watches as hers because it had bite-marks on the band caused by her child (441, 444). Ms. Ortiz recognized the other watch, the earrings and the bracelet as hers (Ortiz 348), and the Walkman as the one the robber had been wearing (349).

The Identification Charge

During its final instructions on identification, the court explained that the jury could consider evidence of the showup identification in determining the reliability of the complaining witnesses' in-court testimony that it was Mr. James who robbed them (516). In particular, the court noted:

> You will recall that each witness, Joanne Ortiz and Melanie Bourne, testified that after the crime, each one saw and identified the defendant at a showup by the police on January 7, 1999 at 96th Street and Jamaica Avenue.
>
> The testimony is that the crime charged was committed on January 7, 1999. This trial is now being held approximately eight months later. This is, therefore, relevant to establish that shortly after the commission of the crime while each witness' memory was perhaps fresher than at present, they each picked out and identified the defendant as the perpetrator of the crime at a showup.
>
> Such prior identification of the defendant Cleon James as the perpetrator may be considered by you together with all of the other relevant evidence or other source o[f] identification in the case in evaluating the accuracy of the identification of the defendant here in court as the perpetrator of the crime charged.
>
> Each witness' prior identification of the defendant in the showup should nevertheless be scrutinized by you with care in making your decision with regards to the defendant whether the right person or the wrong person has been identified (516-17)

The Verdict and Sentence

The jury convicted Mr. James of two counts of robbery in the first degree, two counts of criminal possession of stolen property in the fifth degree, and one count of criminal possession of a weapon in the fourth degree (S. 543).

Mr. James had no criminal history whatsoever, completed high school, attended three semesters of college, and served in the United States Marines. PSR at 3-4. Thereafter, he had a "stable" employment history as a security guard and helicopter company "ramp agent." PSR at 3-4. He had no history of substance abuse or mental illness. PSR at 4.

As a first violent felony offender, Mr. James faced a minimum determinate prison sentence of 5 years and a maximum of 25 years. P.L. § 70.02. The prosecutor recommended an aggregate sentence of 16 years on the robbery counts, two consecutive 8-year determinate prison terms (S. 4). Stressing Mr. James's background, and the fact that no one had been injured, defense counsel argued for the minimum sentences, and that they be served concurrently (S. 4-8).

The court, noting that Mr. James was a high school honors student, that he served in the Marines for four years, and that he had attended St. John's University, accepted the prosecutor's recommendation and sentenced Mr. James to consecutive prison terms of 8 years on each robbery count to be served concurrently with concurrent 1-year sentences on the misdemeanor counts (S. 12-13).

ARGUMENT

POINT I

THE SHOWUP CONDUCTED BY THE POLICE, DURING WHICH THE COMPLAINING WITNESSES WERE PERMITTED TO VIEW APPELLANT IN EACH OTHER'S PRESENCE AFTER THE POLICE TOLD THEM THEY WOULD BE VIEWING A SUSPECT WHO MATCHED THEIR DESCRIPTION OF THE ROBBER WAS UNDULY SUGGESTIVE AND SHOULD HAVE BEEN SUPPRESSED. U.S. Const., Amend V, XIV; N.Y. Const., Art 1, § 6

The police told both complaining witnesses that they had a person who matched the description they gave, and arranged to have them view Mr. James together, to see whether they could identify him as the robber. Their showup identifications of Mr. James should have been suppressed because conveying to the witnesses the police conclusion that Mr. James matched the complaining witnesses' description of the robber, and permitting the witnesses to simultaneously view and identify Mr. James, while he was in custody surrounded by police, was an unduly suggestive identification procedure which should have been suppressed. Therefore, the court's refusal to suppress the unreliable showup identifications violated Mr. James's due process rights. U.S. Const., Amend V, XIV; N.Y. Const., Art 1, § 6; Mason v. Brathwaite, 432 U.S. 98 (1977); United States v. Wade, 388 U.S. 218 (1967); Stovall v. Denno, 388 U.S. 293 (1967); People v. Adams, 53 N.Y.2d 241 (1981).

It is now well-established that showup identifications are inherently suggestive and strongly disfavored. People v. Johnson, 81 N.Y.2d 828, 831 (1993); People v. Duuvon, 77 N.Y.2d 541, 543 (1991); People v. Riley, 70 N.Y.2d 523, 529 (1987); see Stovall v. Denno, 388 U.S. 293, 302 (1967). It is because showups are so unreliable that they are impermissible

in any form unless there is "a showing of compelling circumstances." People v. Rahming, 26 N.Y.2d 411, 416 (1970). Even when a showup is prompt and at the scene, it must be suppressed if it was conducted in an unduly suggestive manner. People v. Ortiz, 90 N.Y.2d 533, 537-38 (1997). The showup the police conducted in this case was unduly suggestive in two ways.

First, the police showed Mr. James to the two complaining witnesses in each other's presence, a procedure that the United States Supreme Court condemned as "fraught with dangers of suggestion." Wade, 388 U.S. at 234; see People v. Washington, 130 A.D.2d 605 (2d Dept. 1987), rev'd on other grounds, 71 N.Y.2d 916 (1988); People v. Leite, 52 A.D.2d 895 (2d Dept. 1976). These "dangers" have been described as "twofold":

> First, by declaring his/her own recognition of the defendant or by making some other comment, one witness might influence another witness's identification. Second, regardless of the sequence of the witnesses' identifications, the joint identification process can fortify the certainty of otherwise tentative identifications. Thus, *both the fact and the strength* of an identification might be the products of the collaboration.

M. Hibel, New York Identification Law, at 179 (1998) (emphasis in original).

Here, the procedure Officer Brunner employed all but ensured that one witness's identification would influence the other. He first asked Ms. Ortiz whether she recognized anyone at the scene, and only when she had responded, "that's him," did he ask Ms. Bourne. Ms. Bourne's agreement with Ms. Ortiz's positive identification, "yes, that's him," is indicative of influence by Ms. Ortiz. This was just the sort of influence the Court of Appeals cautioned against in Adams when it stated that "permitting the victims as a group to view the

suspects increased the likelihood that if one of them made an identification the others would concur." 53 N.Y.2d at 249.

Indeed, the likelihood of influence in this case is even more compelling than that in a similar case in which this Court found a simultaneous viewing unduly suggestive. In People v. Hubener, 133 A.D.2d 233, 233 (2d Dept. 1987), after one complaining witness identified the defendant in a showup, the police transported a second complaining witness to where the defendant was being held. Id. The first witness pointed to the defendant and said, "look." Id. Although the first witness did not actually identify the defendant in the presence of the other witness, as Ms. Ortiz did in this case, this Court nevertheless held that "there is a substantial likelihood that her identification of the defendant influenced" the other witness. Id. at 234. Here, as in Hubener, there was not just the possibility of influence, as exists in every multiple witness showup, there was evidence of actual influence. Cf. People v. Feliz, 251 A.D.2d 134, 134 (1st Dept. 1998) (simultaneous multiple witness showup not impermissibly suggestive because witnesses were "instructed not to say anything until afterwards, when they were questioned separately").

The evidence of actual influence is one of the factors that distinguish this case from those in which New York courts have upheld prompt-and-at-the-scene multiple-witness showups. See, e.g., People v. Love, 57 N.Y.2d 1023 (1982); People v. Leon, 265 A.D.2d 344 (2d Dept. 1999); People v. Laing, 221 A.D.2d 662 (2d Dept. 1995); People v. Burns, 133 A.D.2d 642 (2d Dept. 1987). In those cases, not only was there no evidence that the simultaneous multiple viewings actually affected any of the witnesses, there was no evidence of any other suggestive police conduct. See Love, 57 N.Y.2d at 1024-25 (disfavored

multiple-witness showup tolerated because it was prompt-and-at-the scene, and because there was no "allegation that the conduct of the police was in any way impermissibly suggestive"). In this case, Officer Brunner's improper simultaneous multiple witness showup -- conducted in a manner that maximized the likelihood of influence -- was exacerbated by Officer Coyle's statement to the two witnesses that "some police officers had an individual stopped at that location and he fit the description of the person that robbed them" (W. 34).

Officer Coyle's remark that the police had concluded that Mr. James "fit the description" the witnesses had given essentially conveyed to them that the police believed they had arrested the man who robbed them. This Court has often held that such remarks are impermissibly suggestive. People v. Ramos, 207 A.D.2d 810 (2d Dept. 1994) (showup unduly suggestive where witness may have overheard "that the police 'had the man'"); People v. Brown, 121 A.D.2d 733 (2d Dept. 1986) (police comment to complaining witness that they had found "two guys of the description" the witness had given the police was impermissibly suggestive); People v. Lebron, 46 A.D.2d 776 (2d Dept. 1974) (police comment that person they had in custody "matched the description of the perpetrator which he had given the police" was impermissibly suggestive); People v. Cooper, 31 A.D.2d 814 (2d Dept. 1969) (police statement to victim that "they had caught the two men he had described as his attackers" held impermissible suggestive); see People v. Robles, 46 A.D.2d 748 (1st Dept. 1974) (informing complaining witness that "the second perpetrator was arrested" prior to conducting a showup of that suspect held impermissibly suggestive); Styers v. Smith, 659 F.2d 293 (2d Cir. 1981) (telling complaining witness that the police had a suspect was "dangerously suggestive").

It is the combination of three suggestive factors in this case which required that the showup identifications be suppressed: (1) the simultaneous viewing of Mr. James by both complaining witnesses; (2) Officer Brunner's serial questioning of the two witnesses, which ensured that an identification by the first would influence the second; and (3) Officer Coyle's suggestive comment prior to the showup. Even if none of these alone would require suppression, the combination of all three rendered the showup impermissibly, and unnecessarily, suggestive, such that the showup identifications should have been suppressed.

This case is indistinguishable from People v. Burrows, 53 A.D.2d 1038 (4th Dept. 1976). The court held that by making suggestive comments to two witnesses prior to showing them, in each others' presence, a single photograph of the defendant, the police conducted "an impermissible identification procedure" (citing Simmons, v. United States, 390 U.S. 377 (1968)); see, Adams, 53 N.Y.2d at 249 (confluence of factors, including simultaneous viewing by multiple witnesses and suggestive police comments, rendered showup unduly suggestive). Similarly, in People v. Jackson, 80 A.D.2d 904 (2d Dept. 1981), this Court held that a simultaneous viewing by three witnesses, where the police permitted one witness to identify the defendant first, in front of the others, and a separate viewing by a fourth witness who had been told the police "had the robber" prior to his viewing, were impermissibly suggestive. There, two of the factors present in this case applied to three of the witnesses and the third factor applied only to a fourth witness. Because all three factors applied to both witnesses in this case, the showup procedure conducted in this case was even more egregiously suggestive.

The court's failure to suppress the showup identifications was not harmless error because the identifications were crucial to the People's case. The court specifically instructed the jury that it could look to the showup identifications – which took place at a time when the witnesses' recollections of the robber were much fresher than at trial – in determining whether the trial identifications were reliable. And since the court failed to conduct an independent source hearing, it cannot be assumed that the witnesses in-court identifications were admissible. Although Mr. James's possession of items stolen from the complaining witnesses was evidence that he was the robber, without the complaining witnesses' identifications of him, the jury could have concluded that the People had only proved that he possessed their stolen property but not that he had committed the robbery itself. Accordingly, this Court should reverse Mr. James's conviction, suppress the showup identifications, and order a new trial to be preceded by an independent source hearing. See People v. Burts, 78 N.Y.2d 20, 23-24 (1991); People v. James, 218 A.D.2d 709, 710 (2d Dept. 1995).

POINT II

APPELLANT'S SENTENCES OF 8 YEARS EACH ON THE TWO ROBBERY COUNTS, TO BE SERVED CONSECUTIVELY, WAS HARSH AND EXCESSIVE GIVEN THAT HE WAS AN EDUCATED WORKING MAN WHO HAD SERVED FOUR YEARS IN THE MARINE CORPS AND HAD NEVER BEFORE BEEN ARRESTED, AND THAT NO ONE WAS INJURED DURING THE CRIME.

Mr. James is far from a lost cause who should be warehoused in prison for a long time so as to protect society at large. Rather, until the time of his arrest, Mr. James had lived a crime-free life as a high school graduate who went on to serve four years in the United States Marine Corps, attended St. John's University, and held down stable employment. He had never before been arrested, much less convicted of any crime. Because this case can only be viewed as an aberration, and he has demonstrated his capacity to be a productive member of society, he is a particularly good candidate for rehabilitation. The 16-year prison sentence this first offender received is both unnecessary and unwarranted.

Nor does the crime itself cry out for such a sentence. Even if Mr. James was the robber, he did not harm anyone. He approached the complaining witnesses and calmly demanded their belongings while holding a box cutter in his hand. While it is true that he threatened to cut them if they did not comply, he did not hold the knife to their throats, waive it threateningly, or otherwise terrorize them. Indeed, one of the witnesses never even saw the box cutter. Thus, although his conduct is punishable as a first-degree robbery and should not be condoned, Mr. James could not have been less threatening and still be guilty of first-degree robbery. Since he was a first offender, his sentence should have reflected the fact that his conduct was only minimally of first-degree culpability; it should have been at or near the

minimum sentence permissible. Instead the court imposed a very lengthy aggregate sentence of 16 years by running the sentences on the two robbery counts consecutively.

While the court may have had the statutory authority to impose consecutive sentences for a single robbery of two victims, exercising that authority in the context of this crime and this defendant was both harsh and excessive. Courts typically do not depart from the general practice of imposing concurrent sentences on multiple counts arising from a single criminal transaction unless there is a particular reason to do so. For example, in People v. Curry, 233 A.D.2d 337 (2d Dept. 1996), this Court modified a judgment in which a defendant was sentenced on six counts of robbery to six consecutive prison terms by directing that the defendant serve three consecutive prison terms, one for each of three robberies, each of which involved two victims. See People v. Hoe, 130 A.D.2d 509 (2d Dept. 1987) (directing that sentences on two first-degree robbery counts run concurrently); People v. Lebron, 261 A.D.2d 291 (1st Dept. 1999) (directing that sentences on multiple counts of first-degree robbery run concurrently and reducing those sentences to the statutory minimum). Indeed, this Court has modified judgments to run sentences concurrently even when the counts reflected convictions for different criminal transactions See People v. Walls, 199 A.D.2d 292 (2d Dept. 1993) (directing that the sentences on five robbery counts, each of which involved a separate robbery, run concurrently); See People v. Smith, 162 A.D.2d 734 (2d Dept. 1990) (same).

Here, not only was there no reason to depart from the general practice of giving concurrent time for multiple counts relating to a single criminal transaction, both the nature of the crime and Mr. James's background militated against doing so. The reasons for

reducing Mr. James's sentence include his lack of criminal history, see People v. Danza, 127 A.D.2d 781 (2d Dept. 1987); People v. Frederick, 122 A.D.2d 904 (2d Dept. 1986), his stable employment history, see People v. Ruzack, 196 A.D.2d 897 (2d Dept. 1993), People v. Trujillo, 113 A.D.2d 851 (2d Dept. 1985), his military service record, see People v. Lockwood, 50 A.D.2d 1074 (4th Dept. 1975), and the fact that no one was harmed. See People v. Maryea, 157 A.D.2d 219 (1st Dept. 1990); People v. Aguila, 121 A.D.2d 888 (1st Dep. 1986); People v. Carter, 47 A.D.2d 583 (4th Dept. 1975). In short, Mr. James clearly has the potential to be a productive, law-abiding person when he is released from prison. See People v. Melendez, 129 A.D.2d 449 (1st Dept. 1987); People v. Yturrino, 125 A.D.2d 277 (1st Dept. 1986). Accordingly, in the interest of justice, this Court should modify Mr. James's judgment by directing that the determinate sentences of 8 years on each robbery count be served concurrently.

CONCLUSION

THIS COURT SHOULD REVERSE MR. JAMES'S CONVICTION, SUPPRESS THE SHOWUP IDENTIFICATIONS, AND ORDER A NEW TRIAL TO BE PRECEDED BY AN INDEPENDENT SOURCE HEARING OR, IN THE ALTERNATIVE, MODIFY THE JUDGMENT BY DIRECTING THAT THE SENTENCES HE RECEIVED ON THE ROBBERY COUNTS BE SERVED CONCURRENTLY.

Respectfully submitted,

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June 2000