

SUPREME COURT OF FLORIDA
CASE NO. SC17-1391
Lower Tribunal Case No. 2016-70,106 (11J)

THE FLORIDA BAR,
Complainant,

versus

JONATHAN STEPHEN SCHWARTZ,
Respondent.

_____ /

RESPONSE TO REQUESTS FOR ADMISSIONS

Respondent Jonathan S. Schwartz, pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, responds to the Requests for Admission served on July 27, 2017.

1. That each of the following statements is true and properly admissible as evidence.

SEE ANSWERS BELOW.

A. That on June 3, 2013, in the case styled State of Florida v. Virgil Woodson, local case no. F13-012946 (Miami-Dade County Circuit Court), the State of Florida filed an information charging Virgil Woodson (“Woodson”) with Armed Robbery and Carrying a Concealed Firearm.

ADMIT.

B. That the victim, Gerdie Tellisma (“Tellisma”), made an out-of-court identification of Woodson as the perpetrator from a six-person photographic line-up provided by the police.

ADMIT. RESPONDENT FURTHER CLARIFIES THAT THE VICTIM'S PHOTOGRAPHIC LINE-UP WAS UNCONSTITUTIONALLY SUGGESTIVE AND UNRELIABLE, AND IS NOT ADMISSIBLE AS EVIDENCE IN THE CRIMINAL CASE. RESPONDENT CHALLENGED THE CONSTITUTIONALITY OF THE PHOTOGRAPHIC LINE-UP.

C. That a copy of that line-up, which included the date, the detective’s signature, Tellisma’s signature, and her positive identification of Woodson (indicated by a circle around his photograph), was provided to the defense by the State as a part of its discovery response.

ADMIT.

D. That in October of 2013, Woodson retained you to defend him against the charges.

ADMIT.

E. That on February 13, 2015, you conducted a discovery

deposition of Tellisma.

ADMIT. THE DEPOSITION HAD BEEN RESET AT THE REQUEST OF THE WITNESS.

F. That during the course of the deposition, you confronted Tellisma with Exhibits Two and Three—photo line-ups which were nearly identical in appearance to the original photo line-up prepared by the police and from which Tellisma had made her out-of-court identification.

DENY. THE DEFENSE-CREATED PHOTOGRAPHIC LINE-UPS WERE NOT “NEARLY IDENTICAL” IN THAT NO PICTURE OF MR. WOODSON WAS INCLUDED.

G. That both exhibits contained Tellisma’s signature, the detective’s signature, and included the circle Tellisma had drawn around photograph no. 5, indicating she had made a positive identification.

ADMIT IN PART; DENY IN PART. THE DEFENSE-CREATED PHOTOGRAPHIC LINE-UPS WERE NOT INTENDED TO INDICATE THE WITNESS HAD MADE A POSITIVE IDENTIFICATION.

H. That, however, the actual photograph of Woodson which

you used in your exhibits had been significantly altered, including changes to his hair and appearance.

DENY. NO "ACTUAL PHOTOGRAPH OF WOODSON" WAS INCLUDED IN THE DEFENSE-CREATED PHOTOGRAPHIC LINE-UP.

I. That you did not disclose that Exhibits Two and Three were not true and correct copies of the original line-up, nor did you disclose that you had created and/or altered the line-ups.

DENY. NO DISCLOSURE WAS REQUIRED AND RESPONDENT NEVER REPRESENTED THAT THE DEFENSE-CREATED PHOTOGRAPHIC LINE-UPS WERE PRESENTED AS ACCURATE REPRESENTATIONS OF THE SUGGESTIVE POLICE-CREATED LINE-UPS.

J. That by failing to make these disclosures, you misrepresented the nature of Exhibits Two and Three, and attempted to deceive Tellisma into making a misidentification.

DENY.

K. That by reason of the foregoing, you have violated Rules

3-4.3 (Misconduct and Minor Misconduct) and 4-8.4(c) (Misconduct: A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...).

DENY.

2. That each of the following documents, attached, is a true and correct copy and is properly admissible under the rules:

SEE ANSWERS BELOW.

A. A copy the original photographic line-up, including the date, the detective's signature, Tellisma's signature, and her positive identification of Woodson (indicated by a circle around his photograph), which was provided to the defense by the State as a part of its discovery response, attached hereto as Exhibit "A".

ADMIT.

B. Copies of your Exhibits Two and Three submitted at the February 13, 2015 deposition of Tellisma, attached hereto as Composite Exhibit "B".

ADMIT.

Respectfully submitted,

KUEHNE DAVIS LAW, P.A.
Florida Bar No. 233293
100 SE 2 Street, Suite 3550
Miami, FL 33131-2154
Tel: 305.789.5989
ben.kuehne@kuehnelaw.com
efiling@kuehnelaw.com

By: S/ Benedict P. Kuehne
BENEDICT P. KUEHNE

CERTIFICATE OF SERVICE

I CERTIFY the foregoing was emailed August 21, 2017, to:

Thomas A. Kroeger, Bar Counsel
The Florida Bar - Miami
444 Brickell Avenue, Suite M-100
Miami, FL 33131-1204
Tel: 305.377.4445
tkroeger@flabar.org

Adria E. Quintela, Staff Counsel
The Florida Bar
Lakeshore Plaza II, Suite 130
1300 Concord Terrace
Sunrise, FL 33323
Tel: 954.835.0233
aquintel@flabar.org

By: S/ Benedict P. Kuehne
BENEDICT P. KUEHNE