



WISCONSIN SUPREME COURT  
WEDNESDAY, APRIL 5, 2006  
10:45 A.M.

04AP2936-CR State v. Brian Hibl

*This is a review of a split decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a ruling of the Waukesha County Circuit Court, Judge Paul F. Reilly presiding.*

This is a so-called “accidental confrontation” case involving an encounter that occurred by chance rather than as a part of a police investigation. The Supreme Court is expected to clarify the admissibility of this type of eyewitness identification.

In 2005, the Court handled a criminal appeal that raised an issue of the reliability of eyewitness identification in police show-ups. In a show-up, a witness is shown one person rather than a line of possible suspects or a photo array. The majority in that case held that show-ups are permissible under certain limited circumstances but in general should be avoided in favor of investigative tools that are less prone to error:

The research strongly supports the conclusion that eyewitness misidentification is now the single greatest source of wrongful convictions in the United States, and responsible for more wrongful convictions than all other causes combined.

The Court will, in this case, determine whether its 2005 decision controls the admissibility of eyewitness identifications resulting from accidental confrontations.

Here is the background: In June 2002, a Muskego police officer noticed a red pickup truck and a white van speeding on Racine Avenue. He watched the vehicles jockey for position and then saw the pickup crash and the white van continue without stopping. A witness, Alan Stuller, gave a statement to police in which he provided the only identifying information he said he could recall: that the van driver was a white male.

Two days later, a man called police to report that his employee, Brian Hibl, had reported witnessing the accident. Hibl talked to police and ended up admitting that he was the driver of the white van. He was charged with one count of causing great bodily harm by reckless driving and two counts of causing bodily harm by reckless driving.

Stuller was subpoenaed as a trial witness. When he arrived at the courthouse, he saw Hibl in the hall and identified him as the driver before the trial began. Stuller then took the stand and identified him in court.

Hibl asked for and received a mistrial, and then filed a motion to suppress the identifications made by Stuller. The court granted this motion after concluding that the hallway identification, made 15 months after the crash, was not reliable given his lack of ability on the day of the incident to describe Hibl.

The State appealed, arguing that unplanned encounters should not be subject to the same reliability test as encounters arranged by police. The Court of Appeals affirmed. Judge Richard Brown, dissenting, expressed concern that spontaneous identifications – which occur frequently – will now be much more difficult to admit into evidence.

The Supreme Court will clarify how the reliability of spontaneous, out-of-court identifications is to be weighed.