

APR 05 2017

IN THE SUPREME COURT OF THE STATE OF UTAH

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State of Utah,

Respondent

v.

Case No. 20160714-SC

Isaac Anthony Gallegos,

Petitioner.

ORDER

This matter is before the court on a Petition for Writ of Certiorari, filed on September 2, 2016. On January 31, 2017, the Court issued an order staying its vote on the petition pending the outcome in State v. Lujan, 2015 0840. That order is rescinded and the Petition for Writ of Certiorari is granted as to the following issue:

Whether the court of appeals erred in affirming the district court's denial of Petitioner's motion to suppress an eyewitness identification and in concluding any error in admission was harmless.

The State of Utah obtained an extension of time to file a response to the petition. It also filed a cross-petition at the same time as its response but did not seek an extension of time to file a cross-petition. Accordingly, the cross-petition is dismissed because it was not timely filed. Nevertheless, because the State prevailed before the Court of Appeals and its cross-petition does not challenge the outcome, the Court will permit the State to raise the issue proffered by the cross-petition as an alternate ground for affirmance in the State's brief on the

merits. See State v. South, 924 P.2d 354, 357 & n.7 (Utah 1996). That issue is:

Whether the court of appeals erred in concluding article I, section 7, of the Utah Constitution does not require a threshold determination of suggestive police conduct when evaluating the admissibility of eyewitness identification testimony.

The Court intends to hear argument for this matter on its September 2017 oral argument calendar. A briefing schedule will be established hereafter. Pursuant to Rule 2 of the Rules of Appellate Procedure, the Court suspends the provision of Rule 26(a) that permits the parties to stipulate to an extension of time to submit their briefs on the merits. The parties shall not be permitted to stipulate to an extension. Additionally, absent extraordinary circumstances, no extensions will be granted by motion. The parties shall comply with the briefing schedule upon its issuance.

FOR THE COURT:

April 5, 2017
Date



Thomas R. Lee
Associate Chief Justice

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2017, a true and correct copy of the foregoing ORDER was sent by electronic mail to be delivered to:

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By 
Nicole Gray
Clerk of Court

Utah Supreme Court Case No. 20160714
THIRD DISTRICT, SALT LAKE Case No. 121911467
Court of Appeals Case No. 20140571