Summary of SC98088, *State of Missouri v. Kane Carpenter*
Appeal from the Cole County circuit court, Judge Patricia S. Joyce
Argued and submitted February 25, 2020; opinion issued September 1, 2020

Attorneys: Carpenter was represented by Rosemary E.M. Percival of the public defender's office in Kansas City, (816) 889-7699; the state was represented by Karen L. Kramer of the attorney general's office in Jefferson City, (573) 751-3321.

The Innocence Project Inc. and Midwest Innocence Project, which filed a brief as friends of the Court, were represented by Tricia J. Bushnell of the Midwest Innocence Project in Kansas City, (816) 221-2166.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A defendant appeals his robbery conviction, challenging the circuit court's exclusion of expert testimony about factors affecting the reliability of eyewitness identifications. In a 5-2 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri vacates the conviction and remands (sends back) the case for a new trial. The circuit court erred in excluding the evidence. The case law on which its decision was based was abrogated by the enactment of a statutory test for the admissibility of expert testimony. The exclusion of expert testimony prejudiced the defendant because the victim's eyewitness identification was central to the case and the defendant was deprived of the opportunity to present expert evidence regarding the reliability of eyewitness identifications even despite a victim's genuine belief the identification was right.

Judge W. Brent Powell dissents. He agrees the statute has abrogated the case law and believes the principal opinion's change in the law will improve fairness of jury trials, but he disagrees the circuit court abused its discretion in excluding the expert testimony here as portions of the proffered testimony were inadmissible. He would affirm the judgment.

Facts: While walking after dark in Jefferson City, a white man was robbed by two young black men wearing hoodies, one of whom displayed what the victim believed was the handle of a pistol tucked into his waistband. The men took the victim's iPhone and other items. The victim chased the men a short distance before stopping to call 911. Two young black men were stopped nearby by responding officers. One, Kane Carpenter, appeared to be sweating and breathing heavily as though he had been running. Another officer brought the victim to where the two men were being detained; the victim identified them as the robbers and Carpenter as the man who displayed the gun. The officers subsequently recovered hoodies and the victim's belongings in a nearby alley, but they never found a gun. The state charged Carpenter with first-degree robbery. Before trial, he served notice he intended to call an expert witness to testify about the factors that can impact the reliability of eyewitness identifications. The state moved to exclude such evidence on the ground it could not be admitted under this Court's 1988 opinion in *State v. Lawhorn* and its progeny. Carpenter made an offer of proof (in which the expert testified as he would have at trial). At trial, the victim testified he was "one hundred percent certain" Carpenter

was the man who threatened and robbed him. Carpenter sought to have the expert testify. The state renewed its objection, and the circuit court excluded the expert testimony. The circuit court gave the jury an instruction listing 17 factors it should consider in evaluating eyewitness identification evidence. The jury found Carpenter guilty as charged. Carpenter appeals.

VACATED AND REMANDED.

Court en banc holds: The circuit court erred in excluding the expert testimony. *Lawhorn* and its progeny were abrogated by the enactment of section 490.065.2, RSMo, under which the threshold test of admissibility of expert testimony is merely whether the expert's testimony will help the jury understand the evidence or decide contested issues. Expert testimony about the reliability of eyewitness identifications meets the statutory requirements. In the decades since *Lawhorn* was decided, a near perfect consensus has developed in the scientific community concerning the potential unreliability of eyewitness identifications. Here, the testimony would have helped the jury understand and evaluate the eyewitness identification evidence in this case and consider the factors set forth in the instruction. It would not have invaded the jury's province as factfinder because it concerns the accuracy of an eyewitness's identification, not the credibility of the eyewitness. Carpenter was entitled to adduce whatever evidence he believed best met the charges against him, and availability of alternatives to admissible evidence – such as cross-examination and instructions regarding eyewitness identification – do not make admissible expert evidence inadmissible or provide a sufficient basis for excluding such evidence. This exclusion deprived Carpenter of his opportunity to present expert evidence about the most important issue the jury had to decide – whether the victim's identification of Carpenter was mistaken even though the victim genuinely believed he was right. The circuit court's judgment is vacated, and the case is remanded for a new trial.

Dissenting opinion by Judge Powell: The author agrees section 490.065.2 abrogates *Lawhorn* and its progeny, which no longer should be followed, but he disagrees the circuit court abused its discretion in excluding the expert testimony. Although it should not have done so based on *Lawhorn*, the exclusion was valid for a different reason – portions of the expert's testimony would not have assisted the jury in understanding the evidence at hand. Because portions of the proffered testimony were inadmissible, the circuit court was entitled to reject the entire proffer. The author agrees the principal opinion's change in the law will improve fairness of jury trials in Missouri but cautions attorneys and circuit courts to examine the relevance of expert testimony about eyewitness identification carefully to ensure its admissibility. He would affirm the judgment.