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⌘ Vol. 22, No. 2 - January 13, 2014

Case Name: [Brandon Scott Blasdell v. The State of Texas](#)

- OFFENSE: Aggravated Robbery
- COUNTY: Montgomery
- C/A CASE No. 09-09-0286-CR
- DATE OF OPINION: January 8, 2014
- DISPOSITION: Conviction Affirmed OPINION: [Horton, J.](#)
- TRIAL COURT: 9th D/C; Hon. Michael Mayes
- LAWYERS: [Jeremy Dishongh](#) (Defense); [Bill Delmore](#) (State)

Ed Note: (Procedural History) This case involves the use of expert testimony on the reliability of eye-witness identifications. The Court of Appeals originally affirmed the conviction in an unpublished opinion, finding that the trial had not abused its discretion when it excluded the testimony because it was not relevant. The Court of Criminal Appeals reversed that decision, finding that, on the facts of the case, the testimony was relevant. [Blasdell v. State](#), 384 S.W.3d 824 (Tex.Cr.App. 2012)(see [⌘](#), [Vol. 20, No. 49](#); 12/10/2012). This is the opinion on remand.

[⌘](#) [301.04 Witnesses / Experts / Relevance](#): After the State rested, the trial court conducted a hearing outside the jury’s presence to preview the testimony of Dr. Steven Rubenzer, a forensic psychologist whom Appellant proposed to call as an expert witness with respect to the potential pitfalls with eyewitness identification. Among other matters about which Appellant desired Rubenzer to testify was a phenomenon known as the “weapon focus” effect, which he characterized as “a tendency, when there is a weapon involved, particularly in brief encounters, for the weapon to essentially attract attention away from the perpetrator’s face and, by doing so, result in lesser accuracy for the identification.” Rubenzer had reviewed the offense report and had talked with defense counsel about the facts of the case, but had interviewed neither Hadwin nor Saucedo about the circumstances of the offense or the photo lineup. He was aware, however, that the robber had pointed the revolver at Hadwin’s face during the brief robbery. Toward the end of the hearing, on questioning by the trial court, Rubenzer testified that, because the Hadwin was able to describe the gun which had been used, “tells me that she did look at the gun,” and that it was his opinion that this was “possibly” a case of “weapon focus.” While the trial court allowed Rubenzer to testify about certain aspects of the procedure that Saucedo utilized in conducting the photo lineup, he prohibited Appellant from asking Rubenzer any questions designed to educate the jury about the weapon focus effect.

Holding: With respect to the topic of the weapon focus effect, and in addition to his education and license as a psychologist, Dr. Rubenzer’s resume reveals he reviewed two peer-reviewed articles that, from their titles, appear relevant to the topic of the weapon focus effect. His resume also reflects that he had attended two symposiums where speakers made presentations on that same topic. *** The trial court allowed Dr. Rubenzer to explain the possible confounding factors involved

in eyewitness identifications based on the same general credentials that he had regarding the weapon focus effect. To the extent the trial court disallowed Dr. Rubenzer's testimony based on his qualifications as an expert in the weapon focus effect, we hold the trial court abused its discretion. *** While Dr. Rubenzer generally described the weapon focus effect, he did not describe the principles that apply to it. *** Without any further basis to explain the topic's principles beyond the mere ipse dixit of Dr. Rubenzer, the trial court was not in a position to properly evaluate whether Dr. Rubenzer had either properly stated or applied the principles that govern the weapon focus effect to [Appellant]'s case. *** We conclude that [Appellant] provided the trial court with insufficient information to allow the trial court to determine that Dr. Rubenzer's testimony was reliable. Consequently, we hold the trial court did not abuse its discretion in excluding Dr. Rubenzer's proffered testimony about the weapon focus effect, and we affirm the trial court's judgment.