

Recent Case Report

Date posted: February 24, 2009

U.S. v. Rivera

(1st Cir. 2009) __ F.3d __ [2009 WL 294798]

Issue

Following an armed robbery, did officers permit the victim to see the suspects under circumstances that would have resulted in an unreliable in-court ID?

Facts

Shortly after 8 A.M., two men armed with handguns walked into a mall in Puerto Rico which had not yet opened for business. The men approached the manager of a gallery, pulled out their guns, and warned him “not to act like some tough guy, that they would shoot him.” An optometrist who had just arrived at her store saw what was happening and called 911. The optometrist also notified a maintenance worker who went outside and alerted a municipal police officer. The officer called for backup after locking both the front and rear exits to the mall.

Meanwhile, the two robbers had taken the manager to a lottery business office on the second floor where they forced him to open the safe containing over \$8,000. They then tied him up and headed downstairs where they encountered officers with the Puerto Rico Police Department. The robbers tried to escape, but they were unable to get outside because the doors to the mall were locked. So they went into a restroom where they ditched their guns and the loot. They were arrested as they exited.

At about this time the victim happened to see the robbers in handcuffs as they were being escorted out of the building, and he testified that he “immediately recognized them.” Later that day, he also saw them in a holding cell at the police station and, at some point after that, he saw them in a police car and in a holding cell near the district attorney’s office. During the trial, the manager positively identified the men as the robbers, and they were convicted.

Discussion

On appeal, the defendants argued that the manager should not have been permitted to identify them in court because his viewing of them after the robbery was impermissibly suggestive. The court disagreed.

It is settled that a court may suppress an in-court ID by a witness if officers previously exposed the defendant to the witness under circumstances that would have resulted in a substantial likelihood of irreparable misidentification.¹ To make this determination, the courts utilize a two-step procedure: (1) they decide whether the identification procedure was, in fact, impermissibly suggestive; and (2), if so, they look to see whether the witness’s identification of the defendant was nevertheless reliable.

Applying the first part of the test, the court ruled that manager’s viewing of the defendants at the mall was not suggestive because it was nothing more than a showup;

¹ See *Simmons v. United States* (1968) 390 U.S. 377, 384; *People v. Arias* (1996) 13 Cal.4th 492, 168.

i.e., “a quick confirmation at the scene of the crime that the officers had detained the correct individuals.” Although the court acknowledged that the manager’s subsequent viewings of the defendants “undoubtedly reinforced his original impression,” it added that “they were chance encounters that had marginal significance.”

Moreover, the court ruled that even if the pre-trial IDs were suggestive, the in-court ID could not have been suppressed because, under the second part of the test, there was sufficient reason to believe that the in-court ID was reliable. Among other things, the court noted that the manager “initially observed the defendants face-to-face, at a close distance, as they approached him.” In addition, the manager testified that, during the robbery, he looked at the defendants “every time he had the chance and did so four or five times.” Furthermore, the manager said that when he saw the defendants after the robbery, “his recognition of them was immediate.”

Consequently, the court ruled that the manager’s pre-trial encounters with the defendants “had little, if any, impact on the level of certainty of his in-court identification,” and that the in-court ID was admissible. The defendants’ convictions were affirmed. POV