

Recent Case Report

U.S. v. Lawson

(D.C. Cir. June 10, 2005) __ F.3d __ [2005 WL 1364690]

ISSUES

(1) Were a photo lineup and photo showup impermissibly suggestive? (2) Was a car searched lawfully?

FACTS

Lawson and Smith robbed a Riggs Bank in Washington, D.C. Both men were armed with handguns, and both wore latex gloves. Smith wore a “stretch cap.” Neither wore a mask. After ordering a teller to let him in behind the counter, Lawson took over \$20,000 from the tellers’ drawers. He put the money in a “white, plastic bag” he brought with him. As the robbers ran from the bank, red dye packets secreted in the bait money exploded, causing Lawson to drop the bag. The men escaped.

Lawson’s white plastic bag was recovered by FBI agents outside the bank. It was a Rite Aid pharmacy bag and it contained, in addition to the money, a Rite Aid receipt for a box of latex gloves and a “Spartan” brand stretch cap.

Three days later, FBI agents arrested Lawson on a warrant charging him with robbing a Bank of America branch in Virginia. During an interview, Lawson mentioned that he kept some personal property in his brother’s apartment. When agents went to the apartment, they saw a gray Oldsmobile parked outside. The car matched the description of the getaway car in Bank of America robbery, including a near match on the license plate. Looking inside, the agents saw some latex gloves in the front passenger area. The car was towed and searched at another location. During the search, agents found, in addition to the gloves, some packaging for a “Spartan” brand cap.

Within a week of the robbery, agents interviewed the Rite Aid cashier who handled the sale. When shown surveillance photos from the Riggs holdup, she identified one of the men (Lawson) as the customer. The photo showed only the back and side of Lawson’s head.

Several weeks later, an agent interviewed one of the Riggs’ tellers. She said she had observed one of the men (Lawson) at close range for 20-30 seconds, adding that she “could identify him.” The agent then showed her a photo lineup consisting of six photographs. The teller “immediately” picked the photo of Lawson, saying she was “very sure” that he was one of the robbers.

Before trial, Lawson sought to suppress the identifications made by the bank teller and Rite Aid cashier. He also filed a motion to suppress the evidence found in the Oldsmobile. The court denied the motions. Lawson was convicted.

DISCUSSION

Lawson contended his conviction should be overturned on grounds his motions to suppress were improperly denied. The court disagreed.

LINEUP ID'S: Testimony that a victim or witness identified the defendant at a lineup or showup will be admissible at trial if the ID was reliable. On the other hand, a court will suppress the testimony if the identification procedure was conducted in a manner that created a "very substantial likelihood of misidentification."¹

To determine whether such a likelihood existed, the courts apply a two-prong test.² As the *Lawson* court explained, "We first determine whether the identification procedure was impermissibly suggestive. If it was, we then ask, in light of the totality of the circumstances, whether the identification was sufficiently reliable to preclude a substantial likelihood of misidentification."

As for the bank teller's ID, the court noted there was nothing about it that was even remotely suggestive. Said the court:

The array depicts six African-American individuals of generally similar ages and facial feature. While Lawson contends that his complexion is lighter than that of the others, and that his lips and chin are more prominent, in each respect at least one other pictured individual appears comparable.

The court also noted that before showing the photos to the teller, the FBI agent gave her "a standard admonishment" in which he explained that "photographs may not always depict the true complexion of the person" and that a person's complexion "may be lighter or darker than shown in the photo."

Finally, the court pointed out that even if the procedure was impermissibly suggestive, the circumstances demonstrated the ID was sufficiently reliable to be admissible. Said the court, "Although the identification took place several weeks after the robbery, the teller indicated that she could identify the smaller robber [Lawson]—having observed him at close range and for a considerable period of time—and she showed no hesitation in picking Lawson from the array."

The ID by the Rite Aid cashier was more troublesome. As noted, the cashier was not shown a photo array—instead she saw only surveillance photos which, said the court, are "an arguably suggestive medium" because the photos "only depict the two individuals who had robbed the bank." Moreover, the photos showed only the side and back of Lawson's head. Nevertheless, the court ruled the admission of the ID did not warrant reversal, mainly because of the other overwhelming evidence of Lawson's guilt.

CAR SEARCH: Finally, Lawson argued that the evidence discovered inside the Oldsmobile should be suppressed. The trial court had denied his motion to suppress on grounds that Lawson lacked a reasonable expectation of privacy as to the car's contents because it belonged to Lawson's girlfriend and he had loaned it to his brother. The Court of Appeals ruled that even if Lawson had standing to challenge the search, the agents had probable cause to believe it was the getaway car in the Bank of America robbery and, therefore, there was probable cause to believe it contained "contraband or instrumentalities of crime."

Lawson's conviction was affirmed.

¹ See *Manson v. Brathwaite* (1977) 432 U.S. 98, 106; *Neil v. Biggers* (1972) 409 U.S. 188, 198 ["It is the likelihood of misidentification which violates a defendant's right to due process"].

² See *Manson v. Brathwaite* (1977) 432 U.S. 98, 109-14; *People v. Cunningham* (2001) 25 Cal.4th 926, 989; *People v. Wash* (1993) 6 Cal.4th 215, 244; *People v. Johnson* (1992) 3 Cal.4th 1183, 1216; *People v. DeSantis* (1992) 2 Cal.4th 1198, 1222; *People v. Clark* (1992) 3 Cal.4th 41, 135; *People v. Ochoa* (1998) 19 Cal.4th 353, 412.