



RESOURCES

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By Daigle Law Group

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No Police, No Suppression: Sixth Circuit Upholds Identification in *United States v. Radaker-Carter*

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The United States Court of Appeals for the Sixth Circuit recently released a decision in *United States v. Radaker-Carter*, a case that considers suggestiveness regarding reliability and admissibility of police identification procedures. This case highlights that evidence identifying someone as a suspect usually cannot be thrown out on the grounds that a witness saw a picture from a friend before a police lineup, unless the police themselves were responsible for making things unfair or leading the witness to pick a certain person.

Summary of Facts

On April 23, 2022, a woman known as E.J. went to a store in Detroit. While shopping, she noticed two masked men and described one as light-skinned and the other as dark-skinned. The lighter-skinned man stood behind her in the checkout line, talking with another customer, while the darker-skinned man appeared to be watching her closely. When E.J. left the store and went to the parking lot, the darker-skinned man followed. When she reached her car, he brandished a gun and demanded her belongings. As she complied, the lighter-skinned man emerged from the store, also armed. Together they took her keys and fanny pack, fleeing the scene in E.J.'s rental car.

While waiting for the police, E.J. was approached by the customer who had spoken to the lighter-skinned man earlier. This customer informed E.J. that she recognized the individual from school and exchanged contact information with her. Later, the customer provided E.J. with the name of the suspect, Kyrrah Radaker-Carter, and said he was from Inkster, Michigan and about 30 years old. This customer also communicated directly with the investigating officer and sent him photographs of Radaker-Carter, including screenshots from his Facebook profile. E.J. requested a photograph of who the customer thought the light-skinned carjacker was because she “want[ed] to make sure [she] g[o]t it right.”

Despite instructions from police not to share any photos with E.J., the customer sent her an image from Facebook. When E.J. received the photograph, she texted back that it matched her memory of the perpetrator's features. The identification process continued at the police station, where law enforcement arranged a photo lineup with six men chosen for their similar appearance: matching general sex, race, and hairstyle. However, officers used the Facebook photo provided by the customer

since Radaker-Carter's image did not exist in the police mugshot database. This led to subtle differences such as the background and lighting of his photo, which was darker compared to the others.

E.J. viewed the photo array the day after receiving the Facebook picture from the customer, which was three days after the carjacking. She immediately identified Radaker-Carter as the light-skinned gunman. Shortly afterwards, officers arrested Radaker-Carter, who was found driving E.J.'s stolen rental vehicle.

Radaker-Carter was charged with carjacking and brandishing a firearm in relation to a crime of violence. During district court, he moved to suppress the pretrial identification evidence provided by E.J., arguing that the identification was tainted by suggestive circumstances. The district court denied his motion, holding that the suggestive circumstances were not created by law enforcement and that the photo lineup itself was not unduly suggestive. Radaker-Carter then appealed the denial to suppress the identification evidence to the Sixth Circuit.

United States Court of Appeals for the Sixth Circuit

When the case reached the Sixth Circuit, the Court upheld the district court's decision to deny Radaker-Carter's motion to suppress, finding that due process rules did not require the exclusion of evidence here, although it would have been preferable for E.J. not to have viewed any photo in advance. The Sixth Circuit primarily relied on two cases for the basis of the opinion. First, in *Dowling v. United States*, the Supreme Court held that a defendant's due process right to a fair trial prohibits an out-of-court identification as evidence if it is "so extremely unfair that its admission violates fundamental conceptions of justice." Next, in *Perry v. New Hampshire*, the Supreme Court reaffirmed its holding in *Dowling*. The Court also emphasized that the exclusion of pretrial identification evidence will only succeed if "government officials played a role in creating the suggestive circumstances giving rise to an identification."

On appeal to the Sixth Circuit, Radaker-Carter argued that E.J.'s pretrial identification should be excluded from evidence since she saw a photograph of him before the official police lineup, despite the police officers explicitly asking the customer not to do so. Using *Perry* as guidance, the Sixth Circuit looked at whether the identification procedure was unnecessarily suggestive. The court then considered whether the identification was nevertheless reliable. The court cited its own precedent in *United States v. Peterson* and *United States v. Carson* regarding pretrial identifications. In *Peterson*, the court held that a witness who saw the defendant's photograph in the newspaper by chance is not excluded from evidence. In *Carson*, the court also concluded that a witness who sees a defendant's

social media profile via a coworker before participating in the lineup is not excluded from evidence. Here, the customer who sent E.J. the picture of Radaker-Carter was not a state agent. Moreover, the court found no evidence that she was working with law enforcement to influence E.J.'s selection. Rather, the customer sent E.J. Radaker-Carter's picture against the officer's wishes. Therefore, the court concluded that the customer's text messages did not raise any constitutional concerns that could cause suppression, emphasizing that she acted independently.

The court then evaluated Radaker-Carter's claim that the photo array was suggestive. Applying the same framework as above, the Court found that the photograph array was made up of photos of individuals who "were all African American males of similar build, color, complexion and hairstyle" and placed in random order. The officer who created the lineup explained that Radaker-Carter's photograph may have had some differences since his photo was not in the Detroit Police Department mugshot database. Moreover, the officer stated that the other photos were not from the same database as Radaker-Carter's since "Detroit's system was searchable generically... as opposed to searching by name." Radaker-Carter then argued that it was suggestive since there were only four photographs, his photograph had a different colored background, and his complexion looked lighter compared to the others. The court rejected this claim, citing its precedent that a six-photograph lineup is not suggestive. The court also held that having different colored backgrounds is not impermissibly suggestive and that complexions may look different due to flash. Thus, the Sixth Circuit concluded that the differences were minor and did not warrant suppression. Ultimately, the Sixth Circuit concluded that due process rules did not require the exclusion of evidence here, even though it would have been preferable for E.J. not to have viewed any photo in advance.

Key Takeaways

Radaker-Carter emphasizes that it is crucial for law enforcement to maintain fairness and non-suggestiveness in eyewitness procedures. However, this case also demonstrates that officers will not be penalized for actions that are outside of their control. If law enforcement does not cause or permit unduly suggestive identification conditions, and if lineups or arrays contain comparable images and are assembled with reasonable care, then it will be unlikely for the Court to exclude identification evidence simply because the witness was exposed to information from an independent source.

The case also highlights that photo arrays are not automatically unconstitutional even if they do not match perfectly in every visual detail. As long as differences are minor, reasonably explained, and unlikely to influence the witness, then the photo array will be held as constitutional. However, officers should still try to keep all images as visually and contextually similar as possible, but should document any inevitable differences and be prepared to explain their choices in court. By following department

protocols and keeping identification procedures neutral and professional, you as law enforcement officers can protect both the rights of suspects and the integrity of the investigation.

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