



RESOURCES

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By **Daigle Law Group**

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The Tenth Circuit Court of Appeals rendered an opinion in the case of *United States v. Ruiz*, which considers the reliability of witness identification and highlights the challenges officers often face in balancing investigative procedures with constitutional protections while conducting narcotics operation and investigation.<sup>1</sup>

This case arose from an incident at the Columbus, New Mexico, port of entry, a location frequented by Sergio Ruiz, a resident of the nearby border town. In April 2021, Ruiz drove his Chevrolet Silverado pickup into the United States from Mexico, as he often did. However, this time was different. His truck bed carried cinderblocks, rebar, and two large barrels—materials he claimed were for building a wall at his home. Customs and Border Protection (CBP) officers, recognizing Ruiz as a regular crosser, flagged his cargo as suspicious, considering it might qualify as a commercial load requiring declaration. Officer Alvarado referred Ruiz for secondary inspection, and was alerted to a “Be on the Lookout” (BOLO) notice matching Ruiz’s description, related to suspected narcotics trafficking. At the secondary inspection area, Ruiz’s vehicle underwent a Z Portal X-ray scan, revealing abnormalities located in the spare tire. When officers removed the tire, they discovered over 20 kilograms of methamphetamine and an active GPS tracking device inside. Officers noted that the tool for removing the spare tire was oddly located in the truck bed, raising further suspicion.

At this point, Ruiz consented to a *custodial interview* at the port of entry and denied any involvement, stating he had owned the truck for three years and always maintained control of it. He admitted the vehicle was left unattended overnight in Mexico while cinderblocks were loaded. His phone, which he provided *consent for the officers to search*, showed no call or text history, a common tactic among narcotics couriers. Ruiz was indicted by a federal grand jury on three counts; (1) Conspiracy to possess with intent to distribute 500 grams or more of methamphetamine; (2) Possession with intent to distribute 500 grams or more of methamphetamine; and (3) importation of 500 grams or more of methamphetamine and aiding and abetting. The Government anticipated that Ruiz would put on a defense claiming to be an unknowing courier or “blind mule” for the cartel, meaning that he was unaware his vehicle was used to transport drugs. In response, prosecutors offered testimony from a confidential informant, Eric Weaver, who proposed to identify the defendant as “Senor de Llanta,” or “Tire Man,” the person Weaver knew to be a courier who consistently transported narcotics inside

spare tires. Weaver described three separate interactions with Tire Man in 2020, during which he purchased narcotics hidden in spare tires. During a series of interviews with law enforcement, Weaver provided detailed descriptions of Ruiz's physical appearance, attire, and vehicle description, all aligning with Ruiz at the time of his arrest.

Importantly, during his final interview with law enforcement in March 2022, Weaver repeated the same consistent physical descriptions of the courier who sold him methamphetamine. As a result, HSI Special Agent Vargas presented Weaver with a *six-person photo array* that depicted similarly aged Hispanic men, and told him., "the Defendant's photo may or may not in in the array." Weaver immediately focused on the defendant's photograph and requested a lighter version. Agent Vargas provided a second photo of the defendant, taken from the same time and place as the first ID Photo, but from a slightly different angle, with improved lighting, and without the COVID-19 mask around his neck. After reviewing the second photo, Weaver confidently identified the defendant as "Tire Man," expressing no hesitation in his identification.

Before trial, Ruiz moved to suppress *Weaver's pretrial photo array identification* and his *anticipated in-court identification*. The defendant argued that the photo array was *suggestive* because his photo had three unique characteristics that set it apart from the other five photos; it was darker, had horizontal lines in the background indicative of a mug shot, and only Ruiz wore a mask around his neck, suggesting his arrest was during the COVID-19 pandemic and therefore more recent. He argued that these differences were magnified by the fact that the array contained just six photos. The district court denied the motion, citing Weaver's multiple close-range observations and consistent descriptions of the defendant. The court found that although the photo array leaned toward not being impermissibly suggestive, Weaver's identification was reliable under the totality of the circumstances. Weaver identified the defendant at trial, leading to a conviction on all counts. Ruiz sought review by the Tenth Circuit, asking the Court to determine "*whether a drug courier's identification should be suppressed due to a suggestive pretrial photo array.*"

On appeal to the Tenth Circuit, the Court affirmed the district court's denial of Ruiz's motion to suppress, finding no substantial likelihood of misidentification based on the Biggers factors.<sup>2</sup> Based on the totality of the circumstances, the identification was sufficiently reliable and was properly admitted before the jury.

The Court provided a brief overview of the legal principles and precedent that guide the Courts in considering claims relating to identification procedures. In *Perry v. New Hampshire*, the Supreme Court ruled that determinations as to the admissibility of eyewitness identifications are subject to due process safeguards when police use suggestive identification procedures.<sup>3</sup> In *Manson v. Brathwaite*, the Court

made clear that “suggestiveness of a preindictment ID Procedure does not in itself intrude on a constitutionally protected interest.”<sup>4</sup> Exclusion of a witness’s identification testimony is ONLY warranted when the “suggestiveness creates a very substantial likelihood of irreparable misidentification.”<sup>5</sup> The suggestive photo array “must so affect the witnesses’ perceptions as to render their subsequent in-court testimony unreliable.” Reliability is the linchpin in determining the admissibility of identification testimony, because the constitutional concern here is that an unreliable eyewitness identification risks depriving a defendant of the fair trial guaranteed by the Due Process Clause. In assessing reliability, the Courts consider the five Biggers factors: (1) the opportunity of the witness to view the suspect during the crime, (2) the witness’s level of attention during the crime, (3) the accuracy of the witness’s prior description of the suspect, (4) the level of certainty the witness demonstrated during the array, and (5) the time lapse between the crime and the array.

The Court applied the two-part test, used in determining whether an identification based on a suggestive photo array violates a defendant’s due process rights. First, it assessed whether the photo array was unduly suggestive. Second, the Court evaluated whether the identifications were still reliable based on the totality of the circumstances, which hinges on application of the Five Biggers factors. In this case, the Court need not decide whether the photo array procedure was unduly suggestive because the Tenth Circuit agreed with the district court that Weaver’s identification was sufficiently reliable under the Biggers factors to dispel any risk of misidentification. The Court’s reasoning focused on several key factors that established the reliability of the identification. Weaver had multiple encounters with Ruiz, each lasting long enough to allow him to become well-acquainted with the defendant’s physical appearance, vehicle, and methods as a drug courier. Additionally, Weaver provided several accurate and consistent descriptions of the defendant to law enforcement prior to the presentation of the photo array and expressed confidence in his identification. Lastly, citing Biggers, the Court emphasized 18-month lapse between Weaver’s last meeting with the defendant and his photo array identification. These circumstances provided sufficient independent basis for the identification. Weighing the Biggers factors, the Court found no substantial likelihood of misidentification, rendering the identification admissible.

For law enforcement, this case reminds officers of the importance ensuring identification methods minimize suggestiveness. When an identification procedure approaches the line of impermissible suggestiveness, courts evaluate the reliability of the testimony. As explained by the Ruiz Court, a determination of reliability is grounded in the court’s evaluation of several factors, such as the witness’s opportunity to observe the suspect, their attention and description accuracy, certainty, and the time elapsed between the event and identification. Adhering to reliable and neutral identification procedures, officers maintain the integrity of investigations while respecting constitutional protections afforded to

defendants under the Due Process Clause.

1. *United States v. Ruiz*, No. 23-6159, 2024 U.S. App. LEXIS 19887 (10th Cir. 2024). ↵
2. *Neil v. Biggers*, 409 U.S. 188, 199—200. ↵
3. *Perry v. New Hampshire*, 565 U.S. 228, 232 (2012). ↵
4. *Manson v. Brathwaite*, 432 U.S. 98, 113 n.13 (1977). ↵
5. *United States v. Thody*, 978 F.2d 625, 629 (10th Cir. 1992). ↵

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