

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MAINE**

**UNITED STATES OF AMERICA** )  
 )  
**v.** )  
 )  
**BRIAN T. GOODINE, a/k/a DWAYNE** )  
**GOODINE,** )  
 )  
**Defendant** )

**Criminal No. 01-25-P-H**

**RECOMMENDED DECISION ON MOTION TO SUPPRESS**

Defendant Brian Goodine, charged with conspiracy to distribute and possess with intent to distribute cocaine base and possession with intent to distribute and aiding and abetting the possession with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846 and 18 U.S.C. § 2, seeks to suppress an out-of-court identification made by Special Agent Katherine Barnard of the Maine Drug Enforcement Agency. Motion to Suppress Identification (“Motion”) (Docket No. 28) at [2]-[4]. I recommend that the following findings of fact be adopted and that the motion be denied.

**I. Proposed Findings of Fact**

On March 15, 2001 Barnard, operating undercover, purchased crack cocaine from co-defendant Ricardo King, from whom she had previously made such purchases. She met King by arrangement in a parking lot in Old Orchard Beach. As was their custom, she drove to the site and, when King arrived, she got out of her car and entered the vehicle he was driving. On this occasion, unlike her other purchases from King, King was accompanied by a male passenger in the front seat. Barnard got into the back seat and asked who the male passenger was. King informed her that the

passenger was his brother, and the passenger turned to look at Barnard but did not speak to hear. She completed her purchase, reentered her own car, and left. The transaction took no more than five minutes.

On March 19, 2001 Special Agent Boyle of the Maine Drug Enforcement Agency asked Barnard, who had not been involved in the arrest of the defendant that day at the Holiday Inn Express in Saco, Maine, to look at some photographs. She met with Boyle and looked at eleven digital photographs of four individuals. She recognized King and also identified Goodine as the man who had been sitting in the front seat of King's vehicle during her purchase of crack cocaine on March 15, 2001.

Barnard knew at the time she viewed the photographs that King had been arrested. She knew that the photographs were of people who had been arrested that day in Saco. When Boyle handed her the photographs, he only asked her to look at them. When she wrote a report about her review of the photographs, she did not mention that she had seen a series of photographs.

## **II. Discussion**

Eyewitness identification of a defendant at trial is barred following a pretrial identification by photograph "only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Simmons v. United States*, 390 U.S. 377, 384 (1968). If the procedure was impermissibly suggestive, the identification may nonetheless be admitted provided it is determined to be reliable in the totality of the circumstances. *Neil v. Biggers*, 409 U.S. 188, 199 (1972).

[T]he factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.

*Id.* at 199-200. “[R]eliability is the linchpin in determining the admissibility of identification testimony.” *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977). The *Biggers* factors are to be weighed against the corrupting effect of the suggestive identification itself. *Id.*

The circumstances under which Barnard viewed the photographs were somewhat suggestive. It is not necessary to determine whether they were impermissibly suggestive, however, because, assuming *arguendo* that they were, *see generally United States v. Bouthot*, 878 F.2d 1506, 1514 (1st Cir. 1989), application of the *Biggers* factors compels a conclusion that the identification was reliable and the likelihood of misidentification was low. In this case, Barnard testified that, out of concern for her own safety, she slid to the center of the back seat of King’s vehicle so that she could see both men in the front seat, and that Goodine turned to look at her. As a trained law enforcement officer, Barnard was “not a casual or passing observer,” *Manson*, 432 U.S. at 115, and both her opportunity to view Goodine and her degree of attention weigh in favor of reliability of her identification. Barnard’s written report concerning the transaction described Goodine only as a black male, which he clearly is, but the accuracy of this description has little value due to its lack of specificity. Barnard’s level of certainty in her identification of Goodine when she viewed the photographs and at the hearing was high. The length of time between the crime and the viewing of the photographs was only four days. As I stated on the record at the hearing, I found Barnard’s testimony to be entirely credible. Considered as a whole, the *Biggers* factors direct a conclusion that the identification was reliable and not likely to be erroneous. The evidence presented does not begin to suggest “a very substantial likelihood of irreparable misidentification.” *Simmons*, 390 U.S. at 384.

The facts surrounding the identification at issue here cannot be distinguished from those set forth in *United States v. Maguire*, 918 F.2d 254 (1st Cir. 1990), for any relevant purpose. In that case, a police officer was shown photographs of five white males and was told that the photographs

depicted known associates of two individuals already arrested in connection with a bank robbery; the officer had seen four white males acting suspiciously in the vicinity of the bank immediately after the robbery. *Id.* at 258-59, 263. The next day, the officer was shown six photographs. *Id.* at 263. On both occasions the officer picked out the photograph of the defendant as one of the men he had seen. *Id.* The First Circuit held that both identifications satisfied the reliability index set out in *Biggers*.

### III. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to suppress Barnard's identification be **DENIED**.

### NOTICE

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

Date this 23rd day of July, 2001.

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David M. Cohen  
United States Magistrate Judge

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