

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60592
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HOMERO VALADEZ,

Defendant-Appellant.

Appeal from the United States District Court for
the Southern District of Texas
(94-CR-16-2)

(June 23, 1995)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Valadez appeals his conviction of conspiracy to possess with intent to distribute in excess of 100 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) and 846, and of possession with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) and 18 U.S.C. § 2. We affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

On January 7, 1994, Border Patrol Agents Alvin Harmon and Patrick Ramirez were engaged in surveillance of an area along Falcon Lake in Zapata, Texas which they believed was used for drug smuggling. The agents saw several individuals loading bundles into a blue pickup truck and a Ford LTD. When the agents approached the vehicles and identified themselves, the individuals fled.

Agent Harmon engaged in a chase of one of the individuals, later identified as Valadez, while Agent Ramirez stayed to secure the scene. Ramirez seized eight bundles containing approximately 311 pounds of marijuana from the vehicles and the area near the truck. Harmon's chase of the fleeing individual continued for approximately twenty minutes through abandoned houses and brush-filled areas but ended without any apprehension.

When Harmon abandoned the chase, Sheriff Deputy Lopez drove Harmon back to the vehicles by the lake. Harmon gave Lopez a description of the person he had been chasing. When officers inventoried the blue pickup truck, they found several documents in Valadez's name.

Lopez and Harmon then drove to Valadez's residence, a trailer located in the direction that the person chased by Harmon was last seen fleeing. Harmon knocked on the trailer door and windows, but nobody appeared. Harmon left the location. At about 9:00 a.m., Valadez exited the trailer. A sheriff deputy notified Harmon that officers were talking to an individual that

they believed to be the same person Harmon had been chasing. Harmon subsequently arrived at the trailer and identified Valadez as the subject who had been carrying the bundles and had fled.

DISCUSSION

A. *Harmon's Identification of Valadez*

The district court did not commit plain error, in violation of Valadez's right to due process, by admitting the one-on-one identification of Valadez by Harmon. Even if the identification procedure employed in this case were unnecessarily suggestive, the identification bears sufficient indicia of reliability to allow for its admissibility. See Manson v. Brathwaite, 97 S.Ct. 2243, 2253 (1977).

We consider the following factors in analyzing the reliability of an eyewitness identification: 1) the opportunity of the witness to view the criminal at the time of the offense; 2) the witness' degree of attention; 3) the accuracy of the witness' description of the suspect before identification; 4) the level of certainty demonstrated by the witness and; 5) the time that elapsed between the commission of the crime and the identification. Id.; Neil v. Biggers, 93 S.Ct. 375, 382 (1972). Analysis of these factors in this case reveals that there does not exist a "substantial likelihood of misidentification." Biggers, 93 S.Ct. at 383.

The evidence at trial showed that Harmon had ample opportunity to view the individual later identified as Valadez prior to and during the chase. The evidence shows that, when

Harmon and Ramirez first identified themselves at the crime scene, both of the agents shined their flashlights on Valadez. The agents were able to view Valadez for approximately one minute before he fled, while standing only feet away from him. Harmon testified that, on several occasions during the chase, he pointed his flashlight at the fleeing Valadez. At times, Harmon was close enough to touch Valadez, and Valadez sometimes turned and faced Harmon.

As to Harmon's degree of attention, Harmon was not a casual or passing observer nor a frightened victim. Rather, he was a trained law enforcement officer. As such, he could "be expected to pay scrupulous attention to detail." Brathwaite, 97 S.Ct. at 2253.

Harmon gave Lopez a description of the fleeing suspect shortly after he abandoned the chase and before the identification. The evidence at trial showed that Harmon described the fleeing individual's height, build and haircut. Valadez does not claim that he does not possess the characteristics described.

As to the fourth factor, Harmon was sufficiently certain of the correctness of his identification. Harmon's identification at the trailer was limited to Valadez's stature and to the fact that Valadez had several scratches which appeared to have resulted from his run through the brush. However, nothing in the record suggests that Harmon's identification was equivocal. At trial, Harmon again identified Valadez and stated that he had no

doubt in his mind that Valadez was the individual he observed loading bundles.

Finally, the time that elapsed between the commission of the crime and the confrontation was very brief. Harmon identified Valadez approximately two to three hours after he witnessed the loading of bundles of marijuana.

B. *Sufficiency of the Evidence*

The evidence at trial was sufficient to allow a rational jury to convict Valadez of conspiracy to possess marijuana with intent to distribute and possession of marijuana with intent to distribute. See Jackson v. Virginia, 99 S.Ct. 2781, 2789 (1979). Valadez concedes that the elements of the two offenses were sufficiently proved. He simply argues that, without Harmon's identification, there was insufficient evidence identifying him as the perpetrator of the two offenses. However, Harmon's identification of Valadez was properly admitted into evidence and supports Valadez's conviction.

AFFIRMED.