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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIMINAL CASE NO. 01-0477T
)	
Plaintiff,)	ORDER GRANTING MOTION
)	FOR SUPPRESSION OF
vs.)	IDENTIFICATION
)	
DIEGO CABRERA et. al.,)	
)	
Defendants.)	
)	

I. OPINION

Defendant DIEGO CABRERA [hereinafter CABRERA] moves this court for suppression of an identification made during a line-up and requests the court prohibit an in-court identification.¹ CABRERA argues that denial of the motion will result in a violation of the Due Process Clause. Because the line-up identification was impermissibly suggestive, the court agrees and the motion is granted with respect to suppression of the identification made during a line-up.

II. DISCUSSION

Impermissibly Suggestive Line-up

When identity is an issue, the Due Process Clause enables the defendant to suppress any out of

¹ A motion hearing was held on these two issues. The hearing was held in Tinian. Assistant Attorney General, Dan Cohen appeared on behalf of the Commonwealth. Public Defender, Douglas Hartig appeared on behalf of Defendant.

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1 court identification secured by violating the defendant's rights. An impermissibly suggestive line-up
2 identification violates a defendant's Due Process rights. *Stoval v. Denno*, 388 U.S. 293, 301-02, 87 S.
3 Ct. 1967, 1972, 18 L. Ed. 2d 1199 (1967).

4 A review of the facts surrounding the line-up identification explains why the Commonwealth
5 concedes that the line-up was impermissibly suggestive and that the identification should be suppressed.
6 (Commonwealth's Reply Br. at p.2, 19-22). The facts are undisputed. CABRERA, who has long hair
7 and tattoos on his arms was placed in a line-up with a co-defendant and three other short haired,
8 uniformed officers. (Tinian Audio Rec.) (detailing facts surrounding the line-up identification). Based
9 upon these facts, the court **GRANTS** the motion to suppress the line-up identification. However, the
10 analysis does not end here. The Court must now determine whether any potential in-court identification
11 will be allowed.

12 ***Potential In Court Identification***

13 "Suggestive pretrial identification procedures may be so impermissibly suggestive as to taint
14 subsequent in-court identifications and thereby deny a defendant due process of law." *United States*
15 *v. Bagley*, 772 F.2d 482, 492 (9th Cir. 1985) (citing *United States v. Love*, 746 F.2d 477, 478 (9th
16 Cir. 1984)). However, automatic exclusion of identification testimony is not required because the court
17 has held that the line-up identification was improper. *Bagley*, 772 F.2d at 492 (citing *Manson v.*
18 *Brathwaite*, 432 U.S. 98, 113-14, 97 S. Ct. 2243, 2252-53, 53 L. Ed. 2d 140 (1977) and *Neil v.*
19 *Biggers*, 409 U.S. 188, 198-99, 93 S. Ct. 375, 381-82, 34 L. Ed. 2d 401 (1972)).

20 A subsequent in-court identification made after an unconstitutional pre-trial identification will be
21 allowed if it can be demonstrated through "clear and convincing evidence" that the in-court identification
22 is based upon observations made of the suspect at a different time than those made at the line-up
23 identification. *Tomlin v. Myers*, 30 F.3d 1235, 1237 (9th Cir. 1994) (citing *United States v. Wade*,
24 388 U.S. 218, 240, 87 S. Ct. 1926, 1939, 18 L. Ed. 2d 1149 (1967)). Further, as long as the witness
25 has an independent recollection that is "wholly untainted by the police misconduct," an in-court
26 identification is permissible. *United States v. Lumitap*, 111 F.3d 81, 85 n.4 (9th Cir. 1997) (citing
27 *United States v. Crews*, 445 U.S. 463, 474, 100 S. Ct. 1244, 1251, 63 L. Ed. 2d 537 (1980)).

28 In the present case, the investigating officers' testimony given during the motion hearing

1 demonstrates to the court, by clear and convincing evidence, that the alleged victim had both the
2 opportunity and the time to clearly view her alleged attackers. The officers testified that the victim had
3 spoken with both alleged attackers in a store and then later, after being abducted, spent ten to fifteen
4 minutes in the alleged attackers' car before escaping. Further, the victim was able to provide the officers
5 with detailed descriptions of both alleged attackers shortly after the alleged incident took place. (Tinian
6 Audio Rec.). This demonstrates to the court that the victim has an independent recollection of the
7 alleged attackers that is "untainted" by earlier police misconduct. Accordingly, CABRERA's request to
8 not allow an in-court identification is **DENIED**.

9 **III. CONCLUSION**

10 For the foregoing reasons, CABRERA's motion to suppress the line-up identification is
11 **GRANTED**.

12
13 So **ORDERED** this 30th day of May 2002.

14
15 /s/ David A. Wiseman

16 DAVID A. WISEMAN, Associate Judge
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