

People v Williams

2006 NY Slip Op 30145(U)

January 18, 2006

County Court, Suffolk County

Docket Number: 0001060/2005

Judge: James F.X. Doyle

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in the front passenger's seat. Mr. Wroblewski was then shown a computer generated photo array (People's Exhibit #1) and asked if he recognized anyone in the photo spread. Upon viewing the photo array Mr. Wroblewski immediately selected the defendant's photo as depicted in picture number 6 indicating that the subject was the person from the nightclub. Thereafter, Mr. Wroblewski placed his initials adjacent to picture number 6 and dated it. Detective Walters placed his initials, shield number and Central Complaint Number on the subject document immediately after Mr. Wroblewski initialed the photo spread. After the viewing and initialing process of the photo array, Detective Walters took a written statement from Mr. Wroblewski memorializing the event.

Detective Douglas Mercer testified that he has been employed of the Suffolk County Police Department for 30 years, has been a detective for 18 years and has been in the homicide squad for 13 years. He stated that on April 26, 2005, at approximately 11:25, he arranged a meeting with an employee of the Blush Nightclub by the name of Myung Hoon Park, also known as Danny, by calling him up and advising him he wanted to show him a photo spread. While the detective asked Danny if he could come to his house Danny requested that they meet at the Blush Bar in Commack. The detective agreed and waited in his vehicle along with Detective Harris. Danny arrived and got in the back seat of the detective's vehicle which was situated in the parking lot of the bar. The detective explained to him that he was going to show him six photographs of similar looking black males and if he saw a person known as Curt to point him out. Before displaying the photo spread (People's Exhibit #4), Detective Mercer read the statement contained on the form to Mr. Park. Mr. Park, after reading the admonition, selected the defendant's picture depicted in photo number 6, placed his initials under the photograph and executed the document on the line designated as viewer's signature. Mr. Park further indicated to the detective that he knew Curt for about four months as a patron at Blush's where Danny worked. The detective then filled out the rest of the form indicating that Mr. Park had picked photo number 6; that the person he had picked was now known to him to be Curtis Williams.

CONCLUSIONS OF LAW

A photo array will be found unduly suggestive and improper if it is so arranged as to create a substantial likelihood that the defendant would be singled out for identification (*People v Chipp*, 75 NY2d 327, 336 [1990], cert denied 498 US 833 [1990]; *People v Jackson*, 282 AD2d 830, 832 [2001], lv denied 96 NY2d 902 [2001]). The initial burden is on the prosecution to establish the absence of undue suggestiveness (see, *People v Kirby*, 280 AD2d 775, 777 [2001], lv denied 96 NY2d 920 [2001]).

In determining this issue, the court must consider the totality of the circumstances surrounding the identification in general and four factors specifically. The four key factors are (1) the composition of the array itself; (2) the composition of the array vis-a-vis the identifying witness's description of the perpetrator; (3) the manner in which the array is conducted; and, (4) any external influences including, *inter alia*, suggestive remarks, simultaneous viewings of the suspect by multiple witnesses, or the display of the suspect as the only common denominator in multiple identification procedures (see, *Hibel*, *New York Identification Law*, Gould Publications, 2001 Edition, page 170).

Applying these factors to the case at hand, the court finds that the procedures used in preparing and submitting the photo arrays to Mr. Wroblewski and Mr. Park were appropriate, reasonable and not unduly suggestive. Detective Mercer and Walters showed the identifying witnesses photo arrays which contained images of six individuals including the defendant. All the participants in the photospread were close in age and had similar hairstyles, skin tones and facial characteristics (see, *People v Cotterell*, 25 1 Ad2d 679). Further, the arrays did not, in any way, tend to focus the viewer's attention on the defendant's photo, which would indicate that the police sought to have a particular selection made (see, *People v. Rogers*, 245 AD2d 1041; see also, *People v. Young*, 281 AD2d 905, 906). The testimony shows that both identifying witnesses immediately picked the defendant out of the group of photographs with no hesitation and with no prompting or any other hint of his identity from the police (see, *People v. Parker*, 257 AD2d 693, 694). Further, the identifying witness were not told that an arrest had been made nor was it in any way suggested to them that they should select the photograph of the defendant or anyone else in the array as the perpetrator. Finally, the identifications were not confirmed to them after they were made.

The court had the opportunity to observe both detectives' demeanor and, after listening to their answers, finds them to be in all respects credible witnesses. The court finds that the photographic arrays used in conjunction with the identification procedures were not improperly suggestive (*People v. Price*, 256 A.D.2d 596, 685 N.Y.S.2d 72[2nd Dept. 1998]). Additionally, the court finds that the detectives' actions and words used in interacting with the identifying witnesses did not give rise to an inference of improper behavior. Considering the evidence as a whole, this court concludes that the photographic identification procedures were neither suggestive nor violative of the defendant's

right to due process of law¹. Accordingly, defendant's motion to suppress is denied.

**VOLUNTARINESS OF DEFENDANT'S STATEMENTS
FINDINGS OF FACT**

Detective Douglas Mercer testified that he has been employed of the Suffolk County Police Department for 30 years, has been a detective for 18 years and has been in the homicide squad for 13 years. The detective indicated that on April 22, 2005 at approximately 4:57 p.m. at the intersection of Bayonne Street and Connetquot Avenue in Central Islip, he placed Curtis Williams under arrest for the murder of Louis McGrath. Other members of the Homicide Squad were at the location at the time of the arrest, specifically: Detective Bruce Harris who was present in Detective Mercer's vehicle and Detective Vincent Stephan and John Oliva who were nearby in another vehicle. Mr. Williams was detained after he got into his Cadillac and began to operate his motor vehicle. He was pulled over as he was proceeding east on Bayonne and was told that he had to come with the detectives, that he was under arrest for something that happened that day. The defendant was handcuffed in the back and placed in the rear seat of Detective Mercer's vehicle. Detective Mercer occupied the driver's seat, Detective Harris sat directly behind him and Curtis Williams sat in the rear passenger seat of the vehicle. As the vehicle began to pull away, Mr. Williams commented, "You look familiar to me." In turn, Detective Mercer responded that he was the detective who handled his brother's murder several years ago. Mr. Williams responded "I recognize you. I was going to call you and tell you about the fight."

Detective Mercer then directed Det. Harris to read the defendant his *Miranda* warnings. Det. Harris read the defendant his rights from a card entitled "Rules of Interrogation" (People's Exhibit #2) which was concluded at approximately 5:01 p.m. His testimony indicates that the defendant appeared to understand what was going on and had no questions regarding the first four *Miranda* warnings. In specific response to those questions contained within the "Waiver" section, Mr. Williams answered as follows:

"Do you understand each of these rights I have explained to you?
Yes.
Do you wish to contact a lawyer?
No.
Having these rights in mind, do you wish to talk to me/us now,

¹The use of an array of six photographs is constitutionally permissible where the defendant's photograph is not distinctive (*People v. Rolston*, 109 AD2d 854 [2nd Dept., 1985], *People v. Garcia*, 115 AD2d 617 [2nd Dept., 1985]).

without a lawyer?
Yes."

Detective Mercer testified that thereafter, in connection with the events at Blush earlier in the day, Mr. Williams stated that he had gotten to Blush between 3:15 and 3:30 a.m. and that some guy was bumping into him and his friend Joe on purpose, "...he was moving his shoulder into me and mumbling something to me. I told the bouncer what was going on and the bouncers told him don't start any trouble. The guy kept bumping into me and my friend Joe and then a girl named Autumn told me this same guy had touched her ass. The same guy bumped into me and my friend Joe again. The guy got in his face so I emptied a bottle of beer on the floor because the guy was big. I said do you want to fight. The guy starts cussing at me. The bouncer yelled, 'Curt, don't start trouble.'" He said he then walked out of the club.

At approximately 5:12 p.m. the detectives arrived at the parking lot of headquarters, where the Homicide Squad office is located, wherein the defendant was placed, uncuffed, in interview room number one in the homicide office. The room was described as being eight feet by eight feet and as one enters the doorway, the room opens to the left. There was a table in the room with a two way mirror. Mr. Williams was seated in the corner of the room diagonally across from the doorway. He was provided with a bottle of water. Detective Stephan entered the room to secure Mr. Williams property while Detective Mercer left the room to secure his weapon. Upon re-entering the room at 5:16 p.m., with Detective Harris and Detective Stephan present, Mr. Williams was asked to sign a Prisoner Property Receipt for the defendant's inventoried property. Mr. Williams, who was calm and cooperative, complied. After Detective Stephan was finished with the Prisoner Property Receipt, he left the room and then Mr. Williams was asked to sign the *Miranda* warnings card which was previously read to him.. At approximately 5:17 p.m., in the Homicide Squad Office, the card was signed and dated by Curtis Williams, initialed by Detectives Mercer and Harris, and the Central Complaint Number 05-202085 was placed on the subject document. At 5:17 p.m. the defendant recounted the events that occurred at the Blush Nightclub, specifically:

"This guy Cornell was twenty-four years old. Some big guy, the big guy he was talking about earlier had gotten out of his car and came at him like he wanted to fight. The big guy took a swing at me and missed. I hit the big guy in the stomach. Joe hit him. Another black dude hit him. I kicked him in the head about three or four times. I think that Cornel also kicked him. That night I was wearing black jeans, a checkered plaid shirt, black leather jacket, tee shirt and black boots. I thought that the guy had a razor in his hand and that my car was parked toward the back of the club. The big guy walked away to his car. I was with my

cousin, Cornell Thomas. Joe is a friend of mine but I don't know his last name, Joe is a mix, a Spanish looking guy, and I used to play football with him. During the fight I lost some buttons off of my shirt, and that it was a Rockerwear shirt. Cornell lives on Ash near the boulevard. The big black guy, big muscular black guy was hitting the other big guy and then they all left. When I was walking back towards my car, I was tired and I bent down."

The foregoing conversation, which started as 5:17 p.m., ended at 5:26 p.m. Detective Mercer then advised Mr. Williams that he wanted to take a written statement from him and the defendant agreed. A statement paper with the rights attached to it was used by Detective Mercer to read the defendant his *Miranda* Warnings for the second time (People's Exhibit #3). Mr. Williams was read each of the three printed waivers by the detective. The defendant said "yes" when asked if he understood each of his rights; "no" when asked if he wished to contact a lawyer; and "yes" when asked if you wish to talk to us now, without a lawyer. Curtis Williams wrote his answers to each of the questions contained in the Waiver of Rights section of the *Miranda* warnings, placed his initials after each of the four sections advising the defendant of his rights; placed his initials adjacent to his written answers contained in the Waiver of Rights section and defendant signed his name underneath the Waiver of Rights section at 5:28 p.m. Detective Harris who was also present signed the statement as well. When the *Miranda* warnings were read to the defendant, he appeared to understand what the detective was saying, did not ask any questions of the detective and was responsive to the detective's questions. Mr. Williams did not appear to be high or intoxicated, complied with instructions and was cooperative.

After the defendant agreed to speak to the detective without an attorney, Detective Mercer began to take a written statement from the defendant. This was accomplished by the detective asking a question, Mr. Williams giving an answer and the detective writing down the response. At approximately 5:30 p.m., Detective Ronald C. Tavares, who had just arrived in the office, received a telephone call from attorney John Powers who asked if there was a Curtis Williams in the office and that he will be representing him. Immediately after Detective Tavares hung the telephone up, he advised Detective Stephan of the aforementioned conversation and Stephan in turn advised Detectives Mercer and Harris. The detectives ceased taking the defendant's statement at 5:35 p.m. and advised Mr. Williams that they weren't allowed to talk to him or question him. No additional questions were asked of the defendant other than those associated with pedigree information, normal processing, photographing and fingerprinting.

CONCLUSIONS OF LAW

At a hearing to consider suppression of a defendant's statement, the People must prove beyond a reasonable doubt that the statement was voluntary to permit its admission into evidence before the jury on the People's case in chief (*People v. Anderson*, 69 N.Y.2d 651, 511 N.Y.S.2d 592, 503 N.E.2d 1023 [1986]; *People v. Witherspoon*, 66 N.Y.2d 973, 498 N.Y.S.2d 789, 489 N.E.2d 758 [1985]). *Miranda* warnings, to be effective, must precede the subjection of a defendant to questioning. "Later is too late, unless there is such a definite, pronounced break in the interrogation that the defendant may be said to have returned, in effect, to the status of one who is not under the influence of questioning." (*People v. Chapple*, 38 N.Y.2d 112, 115, 378 N.Y.S.2d 682, 341 N.E.2d 243 [1975]; *People v. Bethea*, 67 N.Y.2d 364, 502 N.Y.S.2d 713, 493 N.E.2d 937 [1986]). In *Chapple*, the Court of Appeals suppressed defendant's post *Miranda* statements as involuntary. There, defendant had been subjected to such continuous custodial interrogation prior to the warnings that the subsequent giving of *Miranda* warnings was insufficient to protect defendant's right in the absence of a definite, pronounced break in the questioning. The court must insure that the defendant's statement was not coerced or otherwise produced in an involuntary manner.

In the matter at hand, the statements of the defendant were made to Detective Mercer. Initially, subsequent to the defendant's arrest and prior to his *Miranda* rights being given, the defendant made the following statements: "You look familiar to me." and "I recognize you. I was going to call you and tell you about the fight." The court finds these statements to be *res gestae*, spontaneous, and self-generated. The court believes the statements to be genuine and not the product of inducement, provocation or encouragement by the police (*People v. Stoesser*, 53 NY2d 648, 438 NYS2d 990 [1981]). Furthermore, the aforementioned statements were not in response to any police questioning or the product of an interrogation environment and occurred immediately preceding the defendant being placed into police custody. Based upon the foregoing, the defendant's motion to suppress these statements is denied.

We now turn to the question of whether the defendant's *Miranda* rights first attached, and if so were they maintained or waived. A defendant in custody must be given *Miranda* warnings before being interrogated regardless of the severity of the offense (*Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 3140, 82 L.Ed.2d 317 [1984]). Waiver of the rights secured by the *Miranda* warnings [180 Misc.2d 511] must be knowingly and voluntarily made (*People v. Sirno*, 76 N.Y.2d 967, 968, 563 N.Y.S.2d 730, 565 N.E.2d 479 [1990]; *People v. Williams*, 62

N.Y.2d 285, 288, 476 N.Y.S.2d 788, 465 N.E.2d 327 [1984]; CPL§ 60.45). After listening to the testimony of Detective Mercer and observing his demeanor, the court finds his statements to be in all respects forthright, reliable, consistent and hence, credible. His testimony reveals that he directed Detective Harris to read the defendant his *Miranda* warnings from a card containing the *Miranda* warnings (People's Exhibit #2). That the defendant was cooperative, complied with directions, did not ask questions, was responsive and did not appear to be high or intoxicated. In response to the questions contained within the waiver section, the defendant responded to each question as follows: Do you understand each of these rights I have explained to you? "Yes"; Do you wish to contact a lawyer? "No"; Having these rights in mind, do you wish to talk to me/us now, without a lawyer? "Yes". That the defendant, after signing the Prisoner Property Receipt in the Homicide Squad interview room, voluntarily signed the *Miranda* warnings card. Mr. Williams was advised of his rights a second time just prior to a written statement being taken from the defendant (People's Exhibit #3). Detective Mercer indicated that he read the *Miranda* rights from the statement paper and the defendant placed his initials in each of the four sections entitled "Your Rights", three sections entitled "Waiver of Rights", and placed the following answers on the statement sheet to the three waiver questions: Do you understand each of these rights I have explained to you? "Yes"; Do you wish to contact a lawyer? "No"; Having these rights in mind, do you wish to talk to me/us now, without a lawyer? "Yes". As earlier noted, the Defendant did not testify at the suppression hearing.

In the case at bar, the defendant's *Miranda* rights first attached when the defendant was arrested and placed in custody. Based upon the credible testimony adduced at this hearing, once the defendant was placed under arrest, his *Miranda* rights were given. All custodial interrogation of Mr. Williams occurred after the defendant knowingly and intelligently waived his rights. The defendant understood his rights and confirmed on two occasions that he did not want to contact a lawyer and agreed to speak to the detectives without a lawyer being present. For the foregoing reasons, the defendant's motion to suppress the defendant's statements is in all respects is denied.

The foregoing constitutes the decision and order of the court.

ENTER.



JAMES F. X. DOYLE J.C.C.