

People v Johnson

2006 NY Slip Op 30702(U)

October 3, 2006

Supreme Court, New York County

Docket Number: 3278/05

Judge: Bonnie G. Wittner

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
 THE PEOPLE OF THE STATE OF NEW YORK, :
 :
 -against- :
 Jason Johnson Ind. 3278/05 :
 :
 DEFENDANT :
 -----X

BONNIE G. WITTNER, J.:

Defendant is indicted for Murder in the Second Degree and Conspiracy in the Second and Fourth Degrees. On August 9 and September 7, 2006, a pretrial Huntley, Rodriquez, Dunaway hearing was held before me. Detective Christopher Drew, Shield 3787, 105th Det. Squad, and Det. Billy Milan, Shield 6770, Queens Homicide Squad, both of the New York City Police Dept. testified for the People. Based on the credible evidence, I make the following findings of fact and conclusions of law.

Findings of Fact

Det. Drew has been a police officer for 19 years and a detective for seven. On September 16, 2003, sometime prior to 11:30 a.m., he went to Idlewild Park in Queens in response to a report of a dead human body in a portable toilet. When he arrived, Det. Drew saw a male lying face down inside the toilet with the door held open by his protruding feet and the hands above the head. Det. Drew knew the man was dead and saw a bullet hole on the top of the head and another on one of the buttocks. [Hearing Transcript, p. 18]. He learned the dead man was Balbino Diaz and that he lived within the confines of the 23rd Precinct in Manhattan.

On November 14, 2003, at the Correctional Facility located on Rikers Island, Det. Drew interviewed an inmate named Angel Vega about the Balbino Diaz death. Vega told Det. Drew

that, prior to September 16, 2003, he and others made a plan to abduct a drug dealer who they believed had a large sum of money and force him to tell them where it was. Among the people he planned this with were an individual named "S tar" who he described as a male black with long dreadlocks. Vega said that he knew Star from Harlem and he also knew that one of Star's associates, Bo, had a brother who lived on 135th Street. Vega said the plot was first suggested by a Ricky Borgess who knew Star and Bo. Vega himself had known Bo and Star for at least a year and had met with Star three or four times to discuss the kidnapping/robbery plan. He also spoke to Star on the telephone.

On the day of the abduction, Vega said he and Star drove around Manhattan looking for Diaz. Vega left before Diaz was taken but rejoined Star and others later at Bo's house. Vega continued that Bo then told him that he had killed Balbino Diaz because "(h)e wouldn't tell me where the drugs were so I shot him in the ass. Then the gun jammed on him and he got mad ... he said he shot him again." (Tr. at 30). Vega identified defendant Jason Johnson as "Star" from a photograph (Peo.'s Exh. 1) which Det. Drew showed him. (Tr. at 28).

On the morning of February 10, 2004, Det. Milan was asked by Det. Drew to pick up defendant Jason Johnson at a parole office in downtown Brooklyn. Det. Milan told defendant that he was taking him to be interviewed by detectives in the 105th Precinct and he might be back within a few hours. (Tr. at 209, 210). Det. Milan escorted Johnson to the 105th and placed him in an interview room. He did not question defendant and when defendant tried to speak about anything of substance Det. Milan "didn't want to talk to him about it ... and reminded him he would be spoken to by detectives in the 105" and "... wasn't going to get into the contents of the interview. It is Drew's case." (Tr. at 252, 265). While he was with Det. Milan, no one

threatened defendant or drew a weapon. He never asked for an attorney. (Tr. at 232).

On February 10, 2004, Det. Drew went to the 105th Precinct to interview defendant who was waiting in a room with Det. Milan. During the course of the interview, defendant went to the bathroom several times, was given water and offered food. He did not appear to be under the influence of medications or other drugs. (Tr. at 34). Peo.'s Exh.2 is a copy of the Miranda warnings sheet from which Det. Drew read. The actual sheet used by him was not produced but Det. Drew recalled that the form was exactly the same as the one he used that day. He also recalled that defendant answered yes to each question but refused to write or sign anything. "He said he didn't want to be a snitch ...but he would talk to me as a man." (Tr. at 41). The conversation between defendant and the detective was cordial. No one threatened Johnson or drew their weapons nor was defendant handcuffed. (Tr. 191). Peo.'s Exh. 3 is a copy of the police report Det Drew prepared after speaking to defendant, in which he wrote down the statement Johnson made during the interview. (Tr. at 48). Defendant identified Angel Vega from a photo and confirmed Vega's representation of his own role in the plot and its aftermath. (Tr. at 50).

In addition to recording defendant's statement on the police DD5 report, Det. Drew recorded some of the interview on a mini tape recorder he put in his pocket while escorting defendant to be fingerprinted. Peo.'s Exh. 5 is a compact disc of that recording and 5a and 5b are transcripts prepared from it.

Conclusions of Law

The police possessed ample probable cause to arrest defendant. The information from Angel Vega described defendant's detailed participation in a conspiracy to kidnap and rob

Balbino Diaz. Neither the fact that the police may have had information which conflicted with some of Angel Vega's statements to them nor Vega's absence at the actual kidnapping undermines probable cause. See. e.g. People v Austin, 9 A.D.3d 369 (2nd Dept. 2004). [once an illicit agreement is shown, the overt act of any conspirator may be attributed to other conspirators to establish the offense of conspiracy]. Vega's minimization of his role in the conspiracy, abduction and murder does not "negate" the probable cause that existed regarding Jason Johnson. Nothing in the record provides a basis for concluding that at the time of arrest it was not reasonably likely that a crime had been committed and that this defendant was a participant in committing it. [CPL 70.10(2)].

As to the identification procedure, Vega identified this defendant from a photograph as the man he had known for at least a year under the name Star. Indeed, part of the probable cause was Vega's statement that he had met with Star when planning the abduction and had ridden around with Star in a car looking for the victim on the day of the kidnap/murder. Vega knew the defendant so well that the showing of the photo could not have tainted his identification.

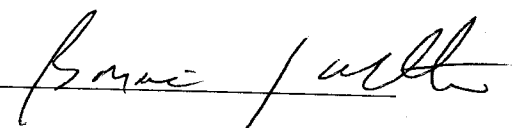
The People have proven beyond a reasonable doubt that the two statements were made by defendant after a knowing, intelligent and voluntary waiver of Miranda rights and that they were otherwise voluntary. Defendant was not questioned until after the warnings were administered and made no statements of substance regarding the case before that. He was not handcuffed in the interview room, was given drink, offered food and in no way coerced.

The motions to suppress the in - court identification and statements as the fruit of an unlawful arrest, suggestive identification procedure or involuntary, non-Miranda questioning are

denied.

Dated: October 3, 2006

New York, New York



BONNIE G. WITTNER, J.S.C.

HON. BONNIE WITTNER