People v Quiles
2006 NY Slip Op 30841(U)
June 6, 2006
Supreme Court, Westchester County
Docket Number: 06-1584
Judge: Robert M. DiBella

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

VICTOR QUILES,

Defendant.

DECISION and ORDER

Ind. No. 06-1584

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DIBELLA, J.

The defendant is charged by indictment with Burglary in the Second Degree, Petit Larceny and two counts of Criminal Possession of Stolen Property in the Fifth Degree. The defendant allegedly committed these offenses on or about November 3, 2006.

This court held a combined Wade/Huntley/Mapp/Sandoval hearing on June 4, 2007. The People called police officers John Hartigan, Peter Scully, Venus Taylor, and Robert Tauber as witnesses. The court found each of the witnesses credible. The defendant did not testify, nor did he present any witnesses. The court makes the following findings of fact and conclusions of law.

FINDINGS OF FACTS

On November 3, 2006, at approximately 1:45 p.m. police officer Hartigan received a radio transmission of a robbery in progress and responded to the corner of Maple and Linden Avenues in the City of Yonkers. At that location he observed two men standing outside a bodega frantically pointing to the door. Officer Hartigan opened the door and saw the defendant standing inside the bodega near the

doorway. Upon seeing the officer, the defendant immediately placed his hands in the air above his head. Officer Hartigan, along with police officer Scully who had arrived on the scene, then asked the two men if "this was the guy" and they responded affirmatively. Officer Hartigan then detained the defendant while other officers who had arrived on the scene further investigated the details of the alleged crimes.

Detective Venus Taylor interviewed Oscar Benegas. Benegas lives at 136 Elm Street. He stated that he was eating lunch with a friend when he was told that there was someone in his apartment at 136 Elm Street. He and his friend immediately went to his apartment and saw the defendant inside his apartment rummaging through his personal property. Benegas noticed some quarters were missing and confronted the defendant by asking him what he was doing in the apartment. The defendant said he was looking for someone named Alex and then fled. Benegas and his friend followed the defendant to a bodega while Benegas' friend called the police.

While Detective Taylor was interviewing Benegas, Officer Scully went inside the bodega and observed a pile of quarters on the cash register counter. The store employee working the register told him that the defendant had just placed the quarters on the counter.

Based on this information, officer Hartigan placed the defendant under arrest and transported him to the Yonkers police station. At 2:30 p.m. Detective Taylor

read the defendant Miranda warnings aloud from a pre-printed "UF-76" card (Exhibit # 30). At the conclusion of the warnings the defendant signed the card and indicated that he was willing to speak with the detective. In response to questioning the defendant stated that he went to 136 Elm Street to look for a friend. He said that he knocked on the door, looked inside the apartment and then left. The defendant stated that the quarters he possessed were his and that he went to the bodega to exchange the quarters for cash so that he could buy a "dime bag" to get high.

During the interview Detective Taylor asked the defendant to remove his sweatshirt and the defendant complied. Underneath his sweatshirt the defendant was wearing another sweatshirt. Detective Taylor then ordered the defendant to empty his pockets and the defendant produced a pair of glasses from the sweatshirt pocket. The glasses were shown to Mr. Benegas who indicated that they were his glasses. The detective told the defendant that the victim identified the glasses. At this point the defendant stated that he wanted an attorney and the interview ceased.

Thereafter, Detective Taylor prepared a photographic array with a photograph of the defendant and five other individuals with physical characteristics similar to the defendant (Exhibit #10). On November 21, 2006, he showed the array to the Ivan Bias, the bodega employee who was working the register at time of the defendant's arrest. Bias viewed the array and identified the defendant's photo as

the person who entered the bodega on November 3rd and placed the quarters on the counter.

MOTION TO SUPPRESS IDENTIFICATION

The defendant's moves to suppress any in-court identification of him on the basis that the identification of the defendant on November 3, 2006, at approximately 1:50 p.m. at the corner of Maple and Linden Avenues and the photographic identification procedure conducted by Detective Taylor were unduly suggestive. That motion is denied.

The identification of the defendant at the bodega on the corner of Maple and Linden Avenues was not a police arranged identification procedure. People v. Dixon, 85 N.Y.2d 218 (1995). Accordingly, it is not subject to suppression. Id.

The identification of the defendant from the photographic array was not the product of an impermissibly suggestive procedure. A review of the array reveals that the photographs used in the array were of sufficiently similar looking individuals randomly positioned so that the viewer of the arrays was not impermissibly drawn to the defendant's photograph. Furthermore, the manner in which the detective presented the array to the witness was not unduly suggestive. See People v. Owen, 275 A.D.2d 905 (4th Dept. 2000); People v. Price, 256 A.D.2d 596 (2nd Dept. 1998). As the photographic identification procedure was not unduly suggestive, the defendant's application for an independent source hearing is also denied. See People v. Johnson, 38 A.D.2d 569 (2nd Dept. 2007).

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MOTION TO SUPPRESS STATEMENTS

The People served defendant with notice pursuant to CPL §710.30 that they intend to introduce at trial the defendant's statement made at approximately 2:45 p.m. on November 3, 2006, at the Yonkers police department. The defendant moves to suppress these statements pursuant to People v. Huntley, 14 N.Y.2d 72.

The court must address the following issues: (1) whether the noticed statements were involuntarily made within the meaning of CPL § 60.45 (2)(a); (2) whether there was a custodial interrogation; and, if so, (3) whether the defendant was advised of his rights pursuant to Miranda v. Arizona, 384 U.S. 466 and then made a knowing, intelligent and voluntary waiver of those rights.

There is no dispute that defendant was in custody when he spoke to Detective Taylor on November 3, 2006 at the Yonkers police station. However, the evidence reflects that he was administered Miranda warnings prior to making his oral statements. The defendant acknowledged that he understood those rights and that he was waiving them. Furthermore, a review of the certified copy of the Miranda card demonstrates that the warnings Detective Taylor gave to the defendant were neither deficient nor defective. See People v. Bartlett, 191 A.D.2d 574 (2nd Dept. 1993).

In addition, there was no evidence that the defendant was coerced, mistreated, or in pain or discomfort when he waived his Miranda rights and agreed to speak to Detective Taylor. See People v. Mercado, 198 A.D.2d 380 (2nd Dept.

1993). Finally, the defendant understood those rights sufficiently to permit him to first waive and then choose to exercise those rights.

Based upon the foregoing, the court finds that the defendant knowingly and intelligently waived his Miranda rights and the statements he made were not involuntarily made within the meaning of CPL § 60.45. Thus the noticed statements are admissible at trial and the defendant's motion to suppress such statements is denied.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

The motion is denied. The information provided by Benegas was sufficient to establish probable cause for the defendant's detention and subsequent arrest. In addition, by leaving the quarters on the counter the defendant evidenced his intention to relinquish any expectation of privacy in the property. Moreover, there is no evidence that the defendant abandoned the quarters as the result of illegal police activity, and the defendant does not challenge the propriety of the police presence inside the bodega. Accordingly, the defendant fails to establish that he had a possessory interest in the quarters or that the recovery of the quarters was the product of a police search and seizure. See §CPL 710.60(3)(b); People v. Mendoza, 82 N.Y.2d 415 (1993); United States v. Salvucci, 448 U.S. 83 (1980); People v. Ponder, 52 N.Y.2d 160 (1981); People v. Phelps, 192 A.D. 483 (1st Dept. 1993).

The court further finds that the recovery of the reading glasses from the defendant's person was the product of a search incident to a lawful arrest. The

police arrested the defendant after Benegas told the police that he observed the defendant inside his apartment without permission. Moreover, both the defendant's inculpatory behavior and the quarters recovered at the time of the arrest corroborated Benegas' allegation that the defendant had just taken the quarters from his apartment. Accordingly, the police had probable cause to arrest the defendant and the reading glasses were recovered as part of a search incident to that lawful arrest. See People v. Cook, 179 A.D.2d 572 (1st Dept. 1992).

SANDOVAL RULING

Pursuant to People v. Sandoval, 34 N.Y.2d 371 (1974), this court must strike a balance between the probative value of the defendant's prior criminal conduct against the potential prejudicial effect of such evidence. This court must also consider "the effect on the validity of the fact finding process if the defendant does not testify out of fear of the impact of impeachment testimony for reasons other than its direct effect on credibility." Id. at 378. In balancing these factors this court recognizes the Sandoval compromise as a mechanism for minimizing the prejudicial impact of admitting otherwise relevant evidence of a defendant's past criminal conduct.

After weighing these factors, the court finds that should the defendant testify the People may inquire into the following convictions and the underlying facts of those offenses: (1) defendant's 2004 conviction for Commercial Bribery in the Second Degree; (2) defendant's 1998 conviction for Petit Larceny; and (3)

defendant's 1991 conviction for Burglary in the Second Degree. These convictions and their underlying facts bear directly on the issue of defendant's credibility and his willingness to place his own interests above the interests of society. People v. Zada, 82 A.D.2d 926 (2nd Dept. 1981).

The People are not permitted to ask the defendant any questions about his 2004 conviction for Resisting Arrest, his two 1989 convictions for Burglary in the Second Degree; his 1988 conviction for violating Section 511 of the Vehicle and Traffic Law; and his 1988 convictions for Criminal Mischief in the Fourth Degree and Criminal Trespass in the Second Degree. Nor may the People inquire about any of the defendant's prior bench warrants or his past use of the names Victor Arce and Victor Rodriguez.

This constitutes the Decision and Order of the Court.

Dated: White Plains, N.Y.
June 6, 2006

Hon. Robert DiBella, A.J.S.C

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