People v Ramashwar

2007 NY Slip Op 31462(U)

May 15, 2007

Supreme Court, Queens County

Docket Number: 0001384/2006

Judge: Gregory L. Lasak

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SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM: PART K-23

P R E S E N T: HON. GREGORY L. LASAK,
Justice.

---X

THE PEOPLE OF THE STATE OF NEW YORK

- against-

Indictment No.: 1384/06

Motion: To suppress identification

TIKAPERSAUD RAMASHWAR,

Defendant.

---X

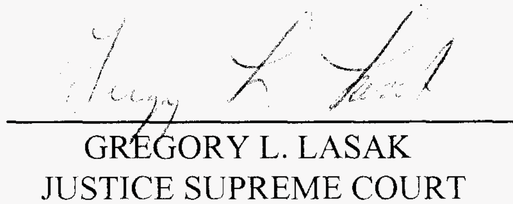
TODD GREENBERG, ESQ.
For the Defendant

RICHARD A. BROWN, D.A.

BY: JESSICA SILVER, A.D.A.
Opposed

Upon the foregoing papers, and due deliberation had, the motion is denied. See accompanying memorandum this date.

Kew Gardens, New York
Dated: May 15, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART K-23
---X
THE PEOPLE OF THE STATE OF NEW YORK

BY: GREGORY L. LASAK, J.S.C.

- against -

Indictment No. 1384/06

TIKAPERSAUD RAMASHWAR,

Defendant.
---X

The following constitutes the opinion, decision and order of the court.

An indictment has been filed against the defendant accusing him *inter alia* of the crime of Assault in the First Degree (PL §120.10-1). The charge is that on March 5, 2006, defendant, assaulted the complainant, Sarbjit Singh, with a dangerous instrument.

Defendant, claiming that improper identification testimony may be offered against him, has moved to exclude the pretrial identification, as well as, the prospective identification testimony of Davinder Singh and Vigramjit Singh upon the ground that they are inadmissible because the prior identification of the defendant by the prospective witness was improper.

The People have the burden of going forward to show that the pretrial identification procedure was not constitutionally impermissible. The defendant, however, bears the burden of establishing, by a preponderance of the evidence, that the procedure was impermissible. If the procedure is shown to be improper, the People then have the burden of proving by clear and convincing evidence that the prospective in-court identification testimony, rather then stemming from the unfair pretrial confrontation, has an independent source.

A pretrial Wade/Dunaway hearing was conducted before me on March 28, 2007.

Testifying at this hearing were P.O. Joseph Cappelmann and Sgt. Craig Moran. I find their testimony to be credible.

I make the following findings of fact:

On March 5, 2006, P.O. Joseph Cappelmann was employed by the New York City Police Department as a Police Officer and assigned to the 102nd Precinct anti-crime unit. P.O. Cappelmann was in plainclothes and the operator of a radio motor patrol car, driving the patrol supervisor/Sergeant.

At approximately 7:10 P.M., Officer Cappelmann received a radio run and responded to 87-50 Lefferts Blvd., Queens County. P.O. Cappelmann testified that he observed the complainant Sarbjit Singh bleeding from his face and blood on his clothing. He spoke to two witnesses, Davinder Singh and Vigramjit Singh. Davinder Singh informed him that there was a dispute and his friend was cut with an unknown object. He provided the license plate and description of the vehicle that the suspect fled in. P.O. Cappelmann was further informed that the back window of the vehicle was broken. A canvass of the area was conducted with witness Vigramjit Singh without any results. The license plate was checked and P.O. Cappelmann was made aware that the vehicle was registered to the defendant, Tikapersaud Ramashwar. Approximately, 10 minutes later. Officer Cappelmann observed the described vehicle and matching license plate number traveling westbound on 101st Avenue at the intersection of 130th Street. The vehicle was stopped, Officer Cappelmann approached the drivers side and observed the defendant, Ramashwar, in the driver's seat. The back window was broken and there appeared to be blood on the door handle.

Officer Cappelmann contacted the witnesses Davinder and Vigramjit Singh who appeared at the intersection of 130th Street and 101st Avenue where the defendant had been stopped. Officer Cappelmann was standing next to the defendant.

Sgt. Moran testified that when the witnesses appeared, one witness stated "that's him, that's him" and simultaneously the second witness stated "yes, yes." Sgt. Moran testified that he did not say anything to the witnesses prior but in response to their statements he asked "that's who" and one of the witnesses responded "that's the man who stabbed my friend." The defendant was not handcuffed and standing next to P.O. Cappelmann and Police Officer Schemelter.

I make the following conclusions of law:

Probable cause to arrest is present when the facts and circumstances known to the arresting officer, warrant a reasonable person with the same expertise to conclude that a crime is being, or was, committed, and that the defendant is the perpetrator. See People v. Maldonado, 86 N.Y.2d 631, 635 N.Y.S.2d 155 (1995); People v. Carrasquillo, 54 N.Y2d 248, 455 N.Y.S.2d 97 (1981); People v. McCray, 51 N.Y.2d 594; 435 N.Y.S.2d 679 (1980); see also C.P.L § 70.10(2). The totality of circumstances gives rise to a finding of probable cause when it is more probable than not that the person to be arrested committed a crime. See People v. Carrasquillo, *supra* at 254; People v. Surico, 265 A.D.2d 596, 697 N.Y.S.2d 356 (3d Dept. 1999). This legal conclusion is made after all the facts and circumstances are considered together. See People v. Bigelow, 66 N.Y.2d 417, 423; 497 N.Y.S.2d 630 (1985). Although the facts and circumstances viewed separately may be insufficient to establish probable cause, when these factors are viewed in totality, probable cause may be found. Id.

In the present case, probable cause exists. The police possessed probable cause to stop the vehicle that matched the license plate number given by the witness , close in time to the occurrence. The vehicle being driven by the defendant, fit the description provided over the radio and defendant was identified by the two eyewitnesses as the individual responsible for the assault. No evidence was presented that would lead this Court to believe that there was any suggestive conduct on the part of law enforcement when the witnesses stated that the defendant was the individual who had cut the complainant. Furthermore, although probable cause was argued, defendant in his memorandum of law concedes that probable cause did exist.

In any event, defendant moves to suppress the show up by the witnesses. The New York State Constitution prohibits the introduction at trial of identification evidence obtained by the government or its agents, if the identification was secured through unduly suggestive means. An identification procedure is "unduly suggestive" if it "creates a substantial likelihood that the defendant would be singled out for identification." People v. Chipp, 75 N.Y.2d 327, 335, 553 N.Y.S.2d 72 (1990) *cert. denied*, 498 U.S. 833 (1990).

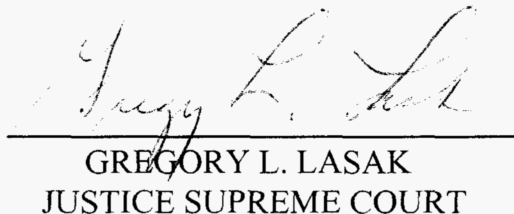
suggestibility , the People had the burden to go forward with credible evidence to establish that the noticed pre-trial identification procedure was legally conducted and not unduly suggestive, People v. Chipp, *supra.* The defendant contends that simultaneous identification by the two eyewitnesses was inherently suggestive and prejudicial.

Simultaneous viewing of the defendant by multiple complainants did not render the show-up impermissible or unduly suggestive, People v. Fox, 11 A.D.3d 709; 784N.Y.S.2d 565 (2004); People v. Jenkins, 256 A.D.2d177, 683 N.Y.S.2d 224 (1998). The identification took place within 40 minutes of the radio run and the stop of the described vehicle and did not involve any suggestive conduct.[1] Thus, suppression is not warranted.

Accordingly, defendant's application to suppress the identification is denied.

The foregoing constitutes the opinion, decision and order of the court.

Kew Gardens, New York
Dated: May 15, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT

[1] In People v. Duuvon, 77 N.Y.2d 541, 569 N.Y.S.2d 346 (1991), a case decided by the Court of Appeals which addressed the propriety of a show up identification, the factors considered by this Court in determining whether the identification procedure was unduly suggestive included the proximity of the defendant's arrest to the scene of the crime and how close in time to the crime the defendant was apprehended.