

People v Booknight

2008 NY Slip Op 30563(U)

January 31, 2008

Supreme Court, Kings County

Docket Number: 0005279/2006

Judge: Cheryl E. Chambers

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM, PART 18

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**DECISIONAND
ORDER**
Kings County
Indictment Number
5279/06

VINCENT BOOKNIGHT,
Defendant.

-----X
CHERYL E. CHAMBERS, J.S.C.

A *Huntley/Wade* hearing was held before me on June 13, 2007. Police Officer David Lambert of the 79th Precinct and Detective Tim Duffy of the Brooklyn North Homicide Squad testified for the People. Defendant did not call any witnesses. Based on the credible evidence, I make the following finding of fact and conclusions of law.

FINDINGS OF FACT

On June 30, 2006, at approximately 10:20 p.m., Officer Lambert and his partner, Officer Colon, were on anti-crime patrol in plainclothes and in an unmarked car when they received a message from police central radio directing them to respond to a report of a male shot at 43 Monroe Street. Upon arrival, Officer Lambert observed Phyllis Howard on the steps of a building one or two buildings away from 43 Monroe St. "yelling and screaming." She pointed toward defendant, leaning on a fence in front of 43 Monroe St., and said "Vincent killed my husband."

Officer Lambert placed defendant in handcuffs. The victim, Kenneth Baker, was lying in a fenced-in area in front of the building. Defendant stated that the male who shot

the victim ran westbound down Monroe St, pointing in that direction. As the officer brought defendant toward their car, Howard came within 10 to 15 feet of defendant, shouting "I saw you."

The officers took defendant to the 79th precinct and placed him in one of the interview rooms in the detectives squad office. At approximately 12:00 a.m., Detective Duffy, who had earlier been assigned to assist in the investigation of Baker's death, entered the interview room and spoke with defendant. The detective introduced himself, took pedigree information, and asked defendant what happened. Defendant stated that someone had been shot in front of his building. He explained, consistently with his statement at the scene, that he had witnessed the shooting.

After speaking with defendant for approximately 20 minutes, Detective Duffy returned to the scene and learned that the victim had been shot three times in the head. The detective returned to the interview room at the 79th Precinct at approximately 2:15 a.m. and read defendant the *Miranda* warnings from a sheet of paper, People's Exhibit 1. Defendant indicated that he understood the warnings and agreed to make a statement.

Detective Duffy told defendant what he had learned at the crime scene. Defendant replied that if he could see his daughter he would tell the detective everything he wanted to know. Defendant was allowed to spend 10 or 15 minutes with his wife and child. Afterwards, he told the detective, in substance, that he shot the victim because the victim was attacking him with a knife. Detective Duffy memorialized the substance of defendant's statement in a police report, People's Exhibit 2.

CONCLUSIONS OF LAW

“[T]he purpose of [a] *Wade* hearing is to test identification testimony for taint arising from official suggestion during police-arranged confrontations between a defendant and an eyewitness” (*People v Dixon*, 85 NY2d 218, 222 [1995] [citations and internal quotation marks omitted]). Here, when the police arrived at the scene, the victim’s wife was already shouting out her identification of defendant as the killer and pointing to him. After placing defendant in handcuffs, the officers took him to their car, while the victim’s wife continued to identify him. Thus, there was no police-arranged confrontation. Consequently, the witness’s identification testimony is not subject to suppression.

At a *Huntley* hearing, the People have the burden of proving the voluntariness of a defendant’s statements beyond a reasonable doubt under the totality of the circumstances (*People v Anderson*, 42 NY2d 35 (1977)). The People must prove that defendant’s statement to Officer Lambert, made after he was placed in custody but before *Miranda* warnings were administered, was made voluntarily and spontaneously, and was not the “product of police interrogation or its functional equivalent” (*People v Huffman*, 61 NY2d 795, 797 [1984]). The test is whether the defendant’s statement “can be said to have been triggered by police conduct which should reasonably have been anticipated to evoke a declaration from defendant” (*People v Lynes*, 49 NY2d 286, 295 [1980]). Here, Officer Lambert did not say anything to defendant and merely took him into custody. Therefore the People have met their burden as to this statement.

Applying the same standard, defendant’s first statement to Detective Duffy must be suppressed. It was made after defendant was placed in custody, before *Miranda* warnings were administered, and in response to police interrogation (*People v Huffman*,

61 NY2d at 797). However, a voluntarily made statement obtained in violation of any aspect of a defendant's *Miranda* rights, although not admissible as evidence-in-chief, may be used to impeach a defendant who chooses to take the stand (*People v Ricco*, 56 NY2d 320 [1982]). Here, the People established that defendant's statements were voluntarily made. There was no evidence presented, nor any claim made, that defendant suffered physical abuse, or the threat of such abuse, psychological pressure, or deprivation of food or sleep. Therefore, the statement may be used for impeachment purposes.

The People must prove that defendant's waiver of his constitutional rights prior to giving his second statement to Detective Duffy was, under the totality of the circumstances, knowing intelligent and voluntary (*People v Anderson*, 42 NY2d 35 [1977]; *People v Huntley*, 15 NY2d 72 [1965]). Here, the uncontradicted evidence shows that defendant was read *Miranda* warnings at the precinct, and that he indicated that he understood the warnings and agreed to speak with Detective Duffy outside the presence of an attorney. There was no evidence of coercion presented.

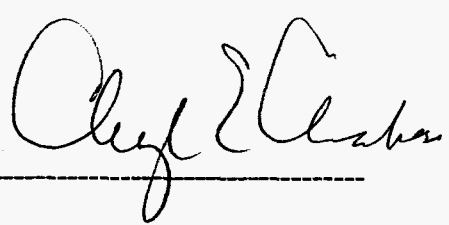
Defendant does not argue that he gave his second, inculpatory statement to Detective Duffy under constraint of his first inadmissible statement. Such an argument would be unavailing in any event since defendant did not testify at the hearing that such was the case (*People v Rifkin*, 289 AD2d 262 [2d Dept 2001], *lv denied* 97 NY2d 759 [2002]; *People v Morgan*, 277 AD2d 331 [2d Dept 2000], *lv denied* 96 NY2d 762 [2001]).

For the foregoing reasons, defendant's motion to suppress identification testimony is denied. His motion to suppress the statement he made at the scene and the statement he

made after he was given the *Miranda* warnings is denied. His motion to suppress the statement he made to Detective Duffy prior to receiving the *Miranda* warnings is granted.

Dated: January 31, 2008

ENTER



J.S.C.

ENTERED
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NANCY T. SUNSHINE
COUNTY CLERK