

People v Monroe

2010 NY Slip Op 31299(U)

May 27, 2010

Sup Ct, Queens County

Docket Number: 0002706/2009

Judge: Gregory L. Lasak

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SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM: PART TAP-D

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

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

- against-

Indictment No.2706/09

Motion: To suppress
statement, physical and
identification
evidence.

REGINALD MONROE,
Defendant.

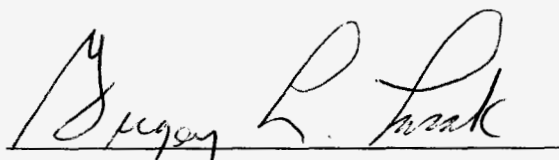
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BY: MARIE SCAVETTA,ESQ.
For the Defendant

RICHARD A. BROWN, D.A.
BY: PATRICK O'CONNOR, A.D.A.
Opposed

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

Kew Gardens, New York
Dated: May 18, 2010



GREGORY L. LASAK
JUSTICE SUPREME COURT

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART TAP-D

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

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

- against -

Indictment No.2706/09

REGINALD MONROE,

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 Murder in the Second Degree (PL §125.25(1)).

Defendant moves to suppress statements, physical, and identification evidence. The

A pretrial suppression hearing was conducted before me on March 29 & 30, 2010 and April 22, 2010.

I give full credence to the testimony of the People’s witnesses, Detective Lee Abrahall, Detective Christopher Bollerman, Detective David Kinard, and Detective Charles LoPresti.

I make the following findings of fact:

On June 22, 2009, Detective Abrahall from the 103rd precinct was assisting in a homicide investigation. At approximately 3:35pm, he interviewed a female regarding the homicide. Det. Abrahall showed the female a photo¹ of a man and she identified him as Reggie. The female signed the photo and wrote “this is Reggie”. Det. Abrahall wrote the

¹People’s #1 in evidence.

date, time and signed his name and shield number. The female told him she knew Reggie from the neighborhood for over a year. Det. Abrahall was informed by the female that “Reggie,” defendant Reginald Monroe, lived in the same building as her boyfriend, the deceased.

Detective Christopher Bollerman testified that on June 22, 2009, he was investigating the murder of John Williams. At approximately 11:00am he interviewed a male named “D” who stated that the defendant lived in the building where he had been staying for approximately one month. Det. Bollerman showed “D” a DMV photo² of the defendant and he stated “that’s him.” “D” signed the photo and wrote “this is Reggie who confronted me and told me not to go back to the house until he comes back to get me.” Det. Bollerman also signed the bottom of the sheet.

Det. Bollerman further testified that on June 22, 2009 at 10:20pm in the 103rd precinct, he and Det. Abrahall interviewed the defendant. Det. Bollerman placed a Miranda form³ in front of the defendant and asked the defendant if he could read and write English which he said he could. Det. Bollerman read the Miranda warnings. The Miranda warning sheet was still on the table in front of the defendant when Det. Bollerman read upside down from the sheet. The defendant was read each warning one at a time, one through six. After each question the defendant was asked if he understood and he responded that he did. The defendant wrote “yes” and his initials next to each question. The defendant then signed the bottom of the sheet. Defendant was asked if he knew a gentleman named “D” and he said he did not. Defendant was asked if he knew the victim, John Williams, aka Shabaz, and he said he did not. Defendant told him that on the date in question he woke up, did his laundry, and spent the evening with his sister where he slept over. As the interview continued the defendant recalled knowing “D” as a panhandler on Sutphin Blvd.. Defendant

²People’s exhibit #2 in evidence.

³People’s exhibit #3 in evidence.

stated that he may or may not have had a conversation with him at a store on the morning of June 21st. Det. Bollerman showed the defendant a photo of “D” and defendant stated “yes, that’s the guy, that’s the panhandler”. Defendant was re-shown a photo of the victim and he remembered knowing him. They discussed the broken banister/railing in the building and defendant did not recall it. The defendant then stated that he remembered that when he came home it was broken and against the wall. He then stated that he took the banister out to the garbage.

Detective Charles LoPresti testified that on June 23, 2009, at approximately 1:00am in the 103rd precinct, he was investigating the homicide of John Williams. Det. LoPresti stated that he was in an interview room with the defendant and Det. Richard Johnson. He stated they talked about the deceased, John Williams, and the defendant’s opinion of him and what type of guy he thought he was. Det. LoPresti told the defendant that he believed he was upset with the deceased and that they were involved in an altercation which ultimately lead to the death. Defendant stated “that sounds about right,” and then pointed to him and stated “I won’t tell you.” He then pointed to Det. Johnson and stated, “I won’t tell you either.”

On June 23, 2009, at approximately 5pm, the defendant was offered and given dinner. At approximately 9:40pm, the defendant was asked to provide a sample of his DNA for the Police Department and he agreed to. Det. Bollerman used a standard New York City Police Department DNA release form⁴, read it to the defendant, and the defendant signed it. The defendant and Det. Bollerman signed the release and a fingernail scraping was taken.

Det. David Kinard, a member of the Queens Homicide Squad, testified that on June 23, 2009, he was present at the 103rd precinct. Det. Kinard was investigating the homicide of John Williams and interviewed the defendant, Reginald Monroe, aka Abdulah Shaheed. He stated that he asked the defendant if wanted to be called Reginald Monroe or Abdulah Shaheed Haqq. The defendant told him he preferred he used his Muslim name. They

⁴People’s exhibit #4 in evidence.

discussed life, religion, and then the homicide of John Williams. Det. Kinard asked if he would give a statement on paper and the defendant stated he would not tell him anything unless he saw the knife. Detective Carey O'Connor went downstairs and brought the knife to the interview room. Defendant was shown the knife and he said he would tell Det. Kinard what happened. He said what happened was self-defense. Defendant agreed to have Det. Kinard write out the statement, review it with him, and he would sign it. Defendant dictated a statement and Det. Kinard wrote it down while the defendant spoke. The statement was completed at approximately 2:05pm. It was three (3) pages⁵ long and was signed at the bottom of each sheet by Abdulah Shaheed Haqq, Det. Kinard, and Det. O'Connor. At approximately 2:30pm on June 23, 2009, Det. Kinard prepared a question and answer statement⁶. The defendant was read and asked ten (10) questions. Defendant orally stated the answers and Det. Kinard wrote them next to each question. Each question and answer was then initialed by the defendant and Det. Kinard. The defendant, Det. Kinard and Det. O'Connor signed the bottom of the question and answer page.

Detective Kinard further testified that at approximately 6:15pm on June 23, 2009, he was present at the 103rd precinct with Assistant District Attorney Catherine O'Connell where she conducted an interview which was audio taped.⁷ The defendant was read each and every *Miranda* warning. The defendant said he understood the warnings and was willing to make a statement. The defendant then made a recorded audio taped statement as to what had happened on June 21, 2009.

I make the following conclusions of law:

A hearing to evaluate the propriety of the identification of the defendant made by "D" and a female was conducted before the Court. The New York State Constitution prohibits

⁵People's exhibit #5 in evidence.

⁶People's exhibit #6 in evidence.

⁷People's exhibit #7 in evidence.

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). At the hearing the prosecution bears the burden of going forward with proof that the pre-trial identification procedure was legally conducted and non-suggestive. Once the People have gone forward it is the defendant who bears the burden to establish by a preponderance of the credible evidence, that the identification procedure employed by the authorities was improper, *People v. Chipp*, 75 NY2d 327, *cert. denied*, 498 US 833(1990). In deciding whether an identification is confirmatory, the court must conclude, as a matter of law, that “the witness is so familiar with the defendant that there is “little or no risk” that police suggestion could lead to a misidentification.” (*People v. Rodriguez*, 79 NY2d 445, 450 [1992]). In *Rodriguez*, the Court of Appeals held that the confirmatory identification exception “may be confidently applied where the protagonists are family members, friends or acquaintances” and that at the other extreme, it clearly does not apply where the familiarity emanates from a brief encounter” (*id.* at 450).

The testimony adduced at the hearing established that “D” and the female both had a prior familiarity with the defendant which falls within “friends or acquaintances” not a “brief encounter” (*People v. Waring*, 183 AD2d 271 [2d Dept 1992]). “D” indicated that they lived in the same building for about a month and that on the day of the homicide he had a conversation with the defendant. The female indicated that she had known the defendant for over a year and that the defendant lived in the same building as her boyfriend, the deceased. Both “D” and the female knew the defendant by name. The familiarity was therefore such that the confirmatory photo was impervious to police suggestion (*See, People v. Walker*, 289 AD2d 53 [1st Dept 2001], appeal denied 97 NY2d 763[2002], *writ of habeas corpus denied* 2003 US Dist. Lexis 11666[SDNY 2003], in which the Appellate Division

held that although the witness did not know the defendant by name, his identification of him was confirmatory in that he had seen him five times before, had noticed his “distinctive eyes and gait”, and had been warned that he was dangerous; *see also, People v. Simmons*, 247 AD2d 494 [2d Dept 1998], appeal denied 91 NY2d 1013, in which the complainant’s identification testimony was held to be confirmatory in that he had seen the defendant in his taxi ten times before the incident, knew that he traveled with the same group of men, and knew that he always asked to go to the same location and was the one who paid the fare).

Accordingly, the defendant’s motion to suppress identification testimony is denied. Based upon the totality of circumstances, this Court finds that the manner in which the photo of the defendant was displayed was proper. Thus, no suppression is warranted.

Defendant further seeks to suppress his statements. A law enforcement officer must administer the *Miranda* warnings to a person in custody before questioning him (*Miranda v. Arizona*, 384 US 436 [1966]). The People have the burden of demonstrating that a defendant was administered each and every *Miranda* warning and that the defendant knowingly, voluntarily and intelligently waived them (*Miranda v. Arizona*, *supra*).

The waiver must be the product of a free and deliberate choice rather than intimidation, coercion or deception. It must be made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it (*Colorado v. Spring*, 479 US 564 [1987]). Where a defendant clearly understands his *Miranda* rights and promptly, after being administered those rights, willingly proceeds to make a statement, a waiver has been established (*People v. Sirno*, 76 NY2d 967 [1990]; *People v. Stoffel*, 17 AD3d 992 [4th Dept 2005], citing *People v. Pond*, 217 AD2d 721, 722 [3d Dept 1995]).

Where a defendant has been given the *Miranda* warnings and knowingly, voluntarily and intelligently waives those rights, the police are not required to repeat the warnings prior to questioning within a reasonable time thereafter, so long as the

defendant has remained in continuous police custody (*People v. Petronio*, 34 AD3d 602, 603 [2d Dept 2006] [twenty-five hour time period was not unreasonable]; *People v. Gonzalez*, 5 AD3d 696, 697 [2d Dept 2004] [eleven and one-half hour time period was not unreasonable], *People v. Fowler*, 2009 WL3720701[N.Y.Sup.] [twenty-five hour time period was not unreasonable]).

Indeed, the court must consider the totality of the circumstances to determine the voluntariness of a defendant's statement (see *People v. Anderson*, 42 NY2d 35, 38 [1977]). The relevant factors to be examined in determining the totality of the circumstances surrounding a defendant's statements include the "duration and conditions of detention, the attitude of the police toward the defendant, and the age, physical state and mental state of the defendant" (*People v. Petronio*, supra at 604, quoting *People v. Baker*, 208 AD2d 758, 759 [2d Dept 1994]).

The defendant was first administered *Miranda* warnings by Detective Abrahall on June 22, 2009, at approximately 10:20pm at the 103rd precinct. The evidence indicates that the defendant was read each and every *Miranda* warning by Detective Abrahall and that he freely, voluntarily, and knowingly waived each and every right. The defendant was fed and remained in custody throughout the night and next day.

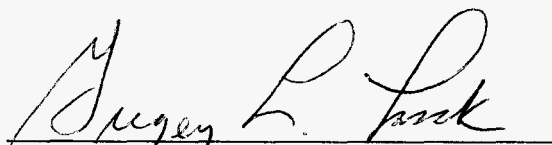
An audio taped recording, People's exhibit 7 in evidence, clearly shows that at approximately 6:15pm on June 23, 2009, the defendant was then re-read each *Miranda* warning by ADA O'Connell. Defendant is heard on the audio tape voluntarily waiving such rights and making a statement. The People have satisfied their burden of demonstrating that defendant was neither coerced, tricked, nor pressured into making his statement, but rather that he freely chose to speak (*See People v. McKie*, 25 N.Y.2d 19 [1969]; *People v Kaye*, 25 N.Y.2d 139 [1969]). Thus, crediting the testimony of Det. Abrahall and Det. Kinard this Court finds that defendant was fully and properly apprised of his *Miranda* rights and knowingly, intelligently, and voluntarily waived them. *See People v. Sirno*, 76 N.Y.2d 967, 563 N.Y.S.2d 730 (1990).

Defendant also moves to suppress the DNA sample taken from him. The defendant knowingly, voluntarily and intelligently agreed to provide a DNA sample. The defendant signed a written consent form. The defendant was lawfully in custody when the consent was given, the motion to suppress the DNA sample is denied (*see People v. Teles*, 1 Misc. 3d 490[Nassau Cty Court 2003]).

Accordingly, the defendant's motions to suppress are denied.

Kew Gardens, New York

Dated: May 18, 2010



GREGORY L. LASAK
JUSTICE SUPREME COURT