

People v Riley

2010 NY Slip Op 32100(U)

August 2, 2010

Supreme Court, Queens County

Docket Number: 164/09

Judge: Gregory L. Lasak

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Composed

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. 164- 09

Motion: To suppress identification
and statement evidence.

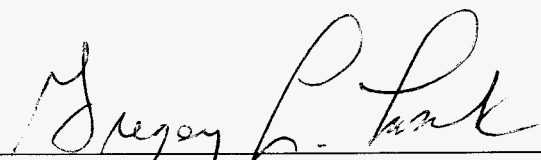
DELROY RILEY,
Defendant.
-----X

BY: HENRY RAMIREZ, ESQ.
For Defendant

RICHARD A. BROWN, D.A.
BY: PETER LOMP, 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: August 2, 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.164/09

DELROY RILEY,

Defendant.

-----X

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

An indictment has been filed against the defendant accusing the defendant *inter alia* of the crime of Murder in the Second Degree (PL §125.25-1).

Defendant moves to suppress identification and statement evidence.

A pretrial Huntley, Wade, Dunaway, Payton hearing was conducted before me on March 26, 2010 and May 28, 2010.

I give full credence to the testimony of the People’s witness, Detective Carl Shephard. I find the testimony of defense witnesses, Robert Battle, Mercedes Cruz, and Deloris Riley, credible in part and incredible in part.

I make the following findings of fact:

On December 20, 2008, Detective Carl Shephard of the 105th precinct, was assigned to investigate a homicide and an attempted homicide that occurred in the vicinity of 242nd Street and 146th Avenue.

Detective Shephard testified that on January 2, 2009, he met with witness #1 and presented the witness with a photo array consisting of six (6) photos¹. The witness was asked whether he recognized anyone that was involved in the incident on December 20. The witness indicated that he recognized #3. Photo #3 was of the defendant, Delroy

People’s exhibit #1 in evidence.

Riley.

Detective Shepherd further testified that on January 19, 2009 at approximately 7pm, along with seven to eight (7-8) members of the 105th detective squad, he went to 107-31 Guy R. Brewer (a private house). He was in plain clothes and had his shield displayed. Detective Shepherd knocked on the front door and a female who identified herself as the defendant's sister answered the door. Detective Shepherd told her he was looking for the defendant and she informed him that he was not home. Detective Shepherd then asked her if he could enter the residence and speak to her. She allowed him and the other team members to enter the home. She escorted them to the living room and her mother and brother joined them. Detective Shepherd was told that the defendant lived there but that he was not home at the time. He was told that he stayed on the top floor with his girlfriend. Detective Shepherd was in possession of an active Kings County bench warrant for the defendant's arrest.

Detective Shepherd testified that he told the family that he wanted to look around and make sure the defendant was not there and they assured him he was not. Defendant's mother then gave the Detective and the field team permission to search the home. Defendant's sister stated that the defendant's girlfriend was upstairs and she wanted to make her aware of what was going on and have her come downstairs because she didn't know if she was dressed or not. Defendant's girlfriend then came down to the living room. Detective Shepherd asked the girlfriend if the defendant was in the residence. He then asked if he was in the room or if she knew where he was. She stated, "no." Detective Shepherd and approximately three to four (3-4) members of the field team went up to the attic area of the home. He entered a small bedroom, looked around and looked in the eaves (the storage area). Detective Shepherd observed a body which turned out to be the defendant. Detective Shepherd ordered him to show his hands and placed him in handcuffs. The defendant was transported to the 105th detective squad interview room.

Detective Shepherd and Detective Schulman entered the interview room and the defendant was read his *Miranda* rights from a preprinted *Miranda* warning sheet². The

² People's #2 in evidence.

defendant was read each warning one at a time, asked if he understood and replied "yes" each time, which Detective Shepherd wrote next to each question. The defendant initialed each question and signed the bottom of the *Miranda* warning sheet. It was dated January 19, 2009. Defendant requested cigarettes and water which were provided to him. The defendant was told why he was there and at first he denied knowing anything about the incident or being there. Detective Shepherd and Detective Shulman then left the interview room and returned approximately one hour later. At that time the defendant stated he was aware of the incident and that he was present. Detective Shepherd reduced the statement to writing³ as the defendant was speaking. In sum and substance the defendant stated that Lah came to his house to get a telephone number for Bihiem to buy a gun. He received a call from Gary asking him to go to his house and get a Mercedes from the yard. When he got there he observed Lah sitting in the driver's seat and Gary in the passenger's seat of a white Range Rover. He observed a few guys coming toward them and one had his hand in his waistband like he had a gun. Gary told him not to worry, "he's on our team." Gary then went into the backyard with a handgun and told the guys to get out of the yard. As they were leaving Lah grabbed the gun from Gary and hit one of the males in the head. The defendant then heard a gunshot. Approximately five to ten (5-10) minutes after completing that statement the defendant agreed to write a statement in his own handwriting⁴. The defendant began writing at approximately 12:05am on January 20, 2009. In his written statement the defendant in sum and substance, described how he met Gary. He wrote how Gary had purchased a car and gave some men his car for a sum of money with monthly payments so the men could keep the car. Gary did not make the payments and the men stopped making payments to him and he lost the truck. After the defendant made the written statement the interview ended. On January 20, 2009, Detective Shepherd conducted a lineup. Two witnesses appeared separately at the precinct to view the lineup. The lineup consisted

People's #3 in evidence.

People's #4 in evidence.

of six (6) individuals including the defendant⁵. The defendant was asked which number he wanted and chose the number two (2) position. At approximately 6:30pm witness #2 viewed that line-up. Present at the lineup were Detective Shepherd, and an Assistant District Attorney from the Queens District Attorney's office. Detective Shepherd asked witness #2 if he recognized anyone that was present at the incident on 242 Street and 137 Avenue on December 20, 2008. Witness #2 was not able to identify anyone in the line-up and left the precinct. Witness #1⁶ was then escorted into the lineup room and asked to view the lineup⁷. Detective Shepherd asked witness #1 if he recognized anyone from the incident. Witness #1 identified the defendant, Delroy Riley, #2 in the lineup and stated "that's Delroy, I saw him that day with the gun."

The defense called Robert Battle as a defense witness. Mr. Battle testified that on January 19, 2009 he was living at 107-31 Guy R. Brewer Blvd.. The first time he saw the defendant that day was when he was being brought down from the attic by the detectives. He was sleeping all day and was awakened by the police knocking on the door. Nicole Riley went to the door asked who it was and told them she was not dressed. Mr. Battle stated that he then went to the door and opened it. Approximately five to six (5-6) officers entered the home, asked his name, pushed past him and went upstairs to the attic on the third (3rd) floor. He stated he did not give them permission to enter the home nor did he hear Deloris Riley, the defendant's mother give consent to search. He stated that he continuously objected to them entering the home and he remained with Detective Shepherd on the first floor who prevented him from going up the stairs.

The defense then called Mercedes Cruz as a witness. Ms. Cruz testified that on January 19, 2009 she lived at 107-31 Guy Brewer Blvd.. She testified that she was present in the home that evening and heard a loud bang on the door. She was on the second (2nd) floor and ran downstairs to see what it was. When she arrived at the front door Robert Battle had already opened the door. She did not hear any of the officers ask

⁵A photo of the lineup was admitted as People's #5 in evidence.

⁶Witness #1 is the same witness who viewed the photo array.

⁷Photo of the lineup, People's #5 in evidence.

for consent or permission to search the home. She heard something about a warrant but did not see a warrant. She stated she was back and forth running up and down the stairs to see what was going on. She observed four (4) officers go upstairs. She stated Deloris Riley was in the bathroom at the time and came out as the officers were going up the stairs. She did not recall hearing any conversation between Deloris Riley and the police officers but stated that consent was never asked for. She then observed the officer escort the defendant out of the house.

Lastly, the defendant called Deloris Riley, the defendant's mother. She testified that on January 19, 2009 she lived at 107-19 Guy R. Brewer Blvd. with her daughter Nicole, and her sons; Marlon, Delroy, and Kwame. Also living in the house was Mercedes, Robert Battle, and her grandchildren Infinity and Kenneth Cruz. At approximately 8:30pm she had returned home from the doctor's office and went to the bathroom. While she was inside the bathroom she heard "strange noises". She came out of the bathroom and saw her living room was full of white men. She realized they were police officers. Approximately, five or six officers were with Nicole, Robert and Mercedes. She did not have a conversation with the officers but asked what they were doing. They said they were looking for Delroy Riley. She was told they had a warrant for him from possibly 1996 but did not recall the exact year. She stated she was in the bathroom when they went upstairs and not one requested her permission or consent to enter the house. She heard loud noises and went up the stairs where the detective told her to go downstairs. She also observed her son, Delroy Riley, who told her it was okay and to please go downstairs. She remained on the second (2nd) floor landing for approximately ten (10) minutes. Shortly after, she observed the defendant handcuffed and escorted out of the house. All three defense witnesses said that prior to that date they had been inside the defendant's room⁸ and it was always neat and in order.

I make the following conclusions of law:

Defendant seeks suppression of the identifications by the complainants. The New York State Constitution prohibits the introduction at trial of the identification evidence

⁸Defense exhibit D, a photo of defendants room after the arrest.

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).

The photographic array at issue was entered into evidence as People’s Exhibit “1” for purposes of the hearing and was reviewed by the Court. The Court has examined the photo array that was shown to the witness and finds that the composition was not suggestive. The “individuals depicted in the photographic array were sufficiently similar to defendant in general physical appearance, including age, coloration, build, attire, pose and facial features, to negate any likelihood of misidentification” (*People v. Jackson*, 211 AD2d 644 [2d Dept 1995]). No factor suggested one photograph over another except the witnesses’ recollection of defendant as the perpetrator.

There is also no requirement that a defendant in a lineup be surrounded by persons nearly identical to him in appearance (see *People v Chipp*, *supra*; *People v Mattocks*, 133 AD2d 89 [2d Dept 1987]; *People v Gallant*, 150 AD2d 602 [2d Dept 1989]; *People v Rodriguez*, 124 AD2d 611 [2d Dept 1986]).

The lineup fillers had facial and physical characteristics that were sufficiently similar to the defendant such that the defendant was not singled out for identification. The Court has reviewed a photo of the lineup, People’s exhibit #5 in evidence, and concludes that the lineup was not suggestive.


Defendant also seeks suppression of his statements. Addressing defendant’s statements made on January 19, 2009 to Detective Shepherd. The defendant was read his Miranda warning and voluntarily waived such rights before making the oral and written statements. The People have met their burden of establishing beyond a reasonable doubt that defendant’s statement was voluntary. See *People v. Witherspoon*, 66 N.Y.2d 973, 498 N.Y.S.2d 789 (1985).

The People have satisfied their burden of demonstrating that defendant was neither coerced, tricked, nor pressured into making his statement, but 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]).

Defendant further argues that a *Payton* violation occurred when Det. Shepherd entered the defendant's home and placed him under arrest. Absent consent or exigent circumstances, evidence seized following a warrantless arrest of an individual inside his home is unlawful and any physical evidence recovered must be suppressed. *People v. Payton*, 445 U.S.573, 100 S.Ct. 1371, 63 L.Ed.2d 639. No physical evidence was recovered from either the home or the defendant's person. Detective Shepherd testified that the defendant's sister opened the door and granted them permission to enter the home and the defendant's mother granted permission to search the home. Regardless, any violation of *Payton* would not require suppression of the statements or the identifications made by the complainants, *People v. Murray*, 169 AD2d 843.

Accordingly, the defendant's motion to suppress the identifications and statements is denied.

Kew Gardens, New York
Dated: August 2, 2010



GREGORY L. LASAK
JUSTICE SUPREME COURT