

People v Koonce

2011 NY Slip Op 34186(U)

March 11, 2011

Supreme Court, Erie County

Docket Number: 01427-2010

Judge: Michael F. Pietruszka

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STATE OF NEW YORK
COUNTY COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

vs. Plaintiff

Ind. No. 01427-2010

NORMAN KOONCE

Defendant

HON. FRANK A. SEDITA, III
District Attorney of Erie County
BY: **JAMES BARGNESI, ESQ.**
25 Delaware Avenue
Buffalo, New York 14202

KEVIN W. SPITLER, ESQ.
181 Franklin Street, Suite 300
Buffalo, New York 14202

MEMORANDUM AND ORDER

PIETRUSZKA, J.

The Defendant was indicted by the Erie County Grand Jury on two counts:
Murder in the Second Degree in violation of Penal Law Section 125.25(1) and
Criminal Possession of a Weapon in the Second Degree in violation of Penal Law
Section 265.03(3). These charges arise out of the fatal shooting of Jawaan Daniels

which allegedly took place in City of Buffalo on June 11, 2010. This matter comes before the Court on the Defendant's motions to suppress oral statements allegedly made by the Defendant to Detective Sergeant James P. Lonergan of the City of Buffalo Police Department on July 13, 2010, and two photographic identifications made by Witness A on June 22, 2010 and by Witness B on September 22, 2010, to Detective Reggie Minor.

Wade and *Huntley* hearings were commenced on October 21 and concluded on November 10, 2010.

FINDINGS OF FACT

The evidence offered by the People in opposition to the motions consisted of the testimony of two witnesses: Detective Sergeant James P. Lonergan and Detective Reginald Minor of the City of Buffalo Police Department, and five exhibits: Photographic Array ID Affidavit (*People's Exhibit #1*), Photographic Array (*People's Exhibit #2*), Photographic Array ID Affidavit (*People's Exhibit #3*), Photographic Array (*People's Exhibit #4*), and *Miranda* rights card (*People's Exhibit #5*) all of which have been admitted into evidence. The Defense offered one witness: Police Officer Earl Perrin of the City of Buffalo Police Department.

WADE

On June 22, 2010 Witness A met in the conference room at the Erie County District Attorney's office with Assistant District Attorney James Bargnesi; Detectives Minor, James Lema, and Scott Malec and two relatives of the witnesses. At the time of the photographic array proceeding, every one left the conference room except Witness A, his mother and Detective Minor. (6; numbers in parentheses refer to pages in the hearing transcript) Detective Minor informed Witness A that he was going to show him a Buffalo police photographic array which consisted of six black males numbered one through six. (6; numbers in parentheses refer to pages in the hearing transcript) Detective Minor then placed the photographic array (*People's Exhibit #2*) face down in front of Witness A. (7) His mother told him to "Do the right thing." (19)

Detective Minor then asked Witness A to review the photographic array to determine whether he could identify anyone in the photographic array from the fatal shooting of Jawaan Daniels. Witness A turned the photographic array over and reviewed it, for about three minutes, picking out the photograph in the number five position. (7; 10; 21) Witness A was asked to place his initials in the upper right-hand corner of the photograph. (7) Witness A was then asked to review the four subsequent questions listed below the photographic array and

answer the questions. (7) Detective Minor testified that Witness A wrote the answers that appear in People's Exhibit #2, signed and dated the document which was notarized by Detective Minor on 6/22/10 at 1:26 p.m. (7-8) Detective Minor further testified that Witness A also completed the Buffalo police photographic affidavit identification or P-88 form in his presence. (8) *People's Exhibit #1*. Furthermore, Detective Minor testified that Witness A's mother did not provide any assistance to him when making his selection. (9) However, Detective Minor testified that Witness A did indicate that he did not want to be involved. (9) Finally, Detective Minor testified that he did not direct, encourage, threaten or coerce Witness A in selecting the photograph. (9-10)

On September 22, 2010 Officer Perrin testified that he was contacted by the Town of Tonawanda Police Department concerning Witness B who had some information regarding a homicide. (50) Officer Perrin transported Witness B from the Town of Tonawanda Police Headquarters to the Buffalo Homicide Office. Officer Perrin testified that he did not discuss the case with Witness B during transport. (52) Officer Perrin contacted Detective Minor about Witness B, but was not advised that Detective Minor was setting up a photographic array for Witness B to view. Witness B was not handcuffed during transport. (53)

Detective Minor met with Witness B in the Buffalo Police Headquarters in Room 327 at 4 p.m., later on September 22, 2010. (11) At the time of the photographic array proceeding, Detective Minor informed Witness B that he was going to show him a Buffalo police photographic array which consisted of six black males numbered one through six. Detective Minor then placed the photographic array (*People's Exhibit #4*) face down in front of Witness B. (11) Detective Minor then asked Witness B to review the photographic array. Witness B turned the photographic array over and pointed to position number five and said "That's Norman." Witness B then placed his initials in both the upper right and left corner of the photograph. (12) Witness B was then asked to review the four subsequent questions listed below the photographic array and answer the questions. (12) Detective Minor testified that Witness B wrote the answers that appear in *People's Exhibit #4*, signed and dated the document which was notarized by Detective Minor on 9/22/10 at 6:28 p.m. (12) Detective Minor further testified that Witness B also completed the Buffalo police photographic affidavit identification or P-88 form in his presence. (13) *People's Exhibit #3*. Finally, Detective Minor testified that he did not direct, encourage, threaten or coerce Witness B in selecting the photograph. (14)

HUNTLEY

On July 13, 2010, Detective Sergeant James P. Lonergan interviewed the Defendant, Norman Koonce, regarding the investigation of the homicide of Jawaan Daniels. The Defendant had been arrested and sentenced on charges unrelated to the homicide of Jawaan Daniels when he was brought to the District Attorney's office, seventh floor conference room, for an interview. (28-29) The Defendant was immediately given his *Miranda* warnings from a card. (29-30) The Defendant received a full recitation of his rights and acknowledged that he understood those rights. (31; 36-37) Detective Lonergan then confirmed that the Defendant was willing to speak to him. (31) The card was initialed by Detective Lonergan, and the Defendant initialed, dated and placed the time of 11:22 a.m. on the card at the request of Detective Lonergan. The card was then stapled to a white piece of paper by Detective Lonergan and placed in the Defendant's file. (30) *People's Exhibit #5.*

Detective Lonergan then questioned the Defendant about Jawaan Daniels and his whereabouts on June 11th and 13th of 2010. Detective Lonergan specifically asked the Defendant where he was at 1:00 p.m. on June 11, 2010. The Defendant admitted to being out of town prior to the interview. Detective Lonergan also inquired about an incident outside Lafayette High School wherein

the Defendant admitted that he was assaulted by six or seven individuals. The Defendant denied knowing any of them. (32-33) At 11:50 a.m., James Murphy, an Investigator with the District Attorney's office entered the room and asked the Defendant several questions. The interview took less than an hour. (34) Detective Lonergan filed a police report (P-73) regarding the interview. (35; 41) Finally, Detective Lonergan confirmed that he was advised that the Defendant was no longer represented by counsel at the time of the interview. (36)

DECISION - WADE

The Defense moves for suppression of the identification made by Witnesses A and B. The Defense contends that the Defendant was improperly identified prior to and/or subsequent to the time of his arrest for the charge in this indictment. The Defense specifically contends that an improper and prejudicial photographic array was conducted on June 22, and September 22, of 2010.

This Court finds this argument to be unpersuasive. *People v. Johnson*, 99 Misc.2d 450, and *United States Constitution Amendment 14*. The facts and circumstances surrounding the June 22, 2010 photographic array to Witness A and the photographic array to Witness B on September 22, 2010 were both sufficiently outlined and explored in the course of the *Wade* hearing. No evidence was submitted to indicate that the process used by Detective Minor,

which resulted in the identification made by Witness A on June 22, 2010, or in the identification made by Witness B on September 22, 2010, were in any way unduly suggestive or tainted. Further, this Court finds that the testimony of Detective Minor was credible and that he did not attempt to physically, verbally or otherwise indicate any one of the six photographs contained in either the June 22, 2010 or the September 22, 2010 photographic array. Nor did the evidence indicate that either the mother of Witness A attempted to influence her son or that Officer Perrin attempted to influence Witness B.

Therefore, this Court finds no merit to the contention that the identification of the Defendant was illegal or unlawfully obtained and/or tainted under Federal, State and/or local standards. This Court finds that the identifications made by Witness A on June 22, 2010 and by Witness B on September 22, 2010 were not unduly suggestive and, as such, did not violate the Defendant's rights of due process.

DECISION - *HUNTLEY*

The Defense moves for suppression of the Defendant's oral statement made to Detective Lonergan on July 13, 2010, claiming that the statement was illegally obtained, pursuant to Sections 710.30 and 710.60 of the Criminal Procedure Law (hereinafter "CPL"). The Defense contends that the statements attributed to the

Defendant by Detective Lonergan on July 13, 1010 were not voluntarily made (CPL 60.45) and were in violation of rights given to the Defendant by the Constitution and Laws of the United States and/or the State of New York.

After hearing and considering all the testimony and other evidence admitted during the hearing and the arguments of counsel, this Court is of the opinion that the People have produced credible, trustworthy evidence and has sustained the burden to establish beyond a reasonable doubt that the oral statement the Defendant gave to the police was given voluntarily within the meaning of CPL 60.45; that the Defendant had no mental or psychological deficiency, and that he understood the English language; that no force, duress or promises were made to induce the Defendant's statement; that the Defendant gave no indication that he was represented by counsel or wanted counsel, and that the Defendant was fully and fairly advised of his constitutional rights in full compliance with the requirements of *Miranda v. Arizona*, 384 U.S. 890, prior to making the oral statement. The Defendant then knowingly, intelligently and voluntarily waived his right to remain silent in speaking with Detective Lonergan and giving the oral statement. *People v. Miles*, 115 A.D.2d 962 and *People v. Love*, 85 A.D.2d 998. As the Defendant's statement was voluntarily given, the Defense's Motion to Suppress the statement is denied in all respects.

Therefore, upon the reading and the filing of the Notice of Motion together with the affidavit of Kevin W. Spittler, Esq., sworn to on August 13, 2010, in support of the motion; and the Answering Affidavit of Assistant District Attorney, James F. Bargnesi, Esq., dated September 1, 2010 in opposition thereto, and all the evidence adduced at the *Wade* and *Huntley* hearings commenced on October 21, and concluded on November 10, 2010, and due deliberation having been had thereon, it is, hereby

ORDERED, that the Defense's motion to suppress the identification made by Witness A on June 22, 2010 is hereby **DENIED**, and it is further

ORDERED, that the Defense's motion to suppress the identification made by Witness B on September 22, 2010 is hereby **DENIED**, and it is further

ORDERED, that the Defense's motion to suppress the Defendant's oral statement of July 13, 2010 is hereby **DENIED**.

This decision shall constitute the Order of the Court in this matter and no other or further Order shall be required.

DATED: Buffalo, New York
March 11, 2011

GRANTED



MICHAEL PIETRUSZKA, J. C. C.

MAR 11 2011
BY 
EDWARD B. HOLMES
COURT CLERK