

People v Wilkinson

2011 NY Slip Op 34268(U)

January 10, 2011

County Court, Westchester County

Docket Number: 00082-2010

Judge: Susan Cacace

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

KEITH WILKINSON

Defendant.

-----X
CACACE, J.

FILED
AND ENTERED
ON 11/10 2011
WESTCHESTER
COUNTY CLERK

DECISION AFTER HEARING

Indictment No.: 00082-2010

FILED
JAN 10 2011
TIMOTHY C. IDOM
COUNTY CLERK
CITY OF WESTCHESTER

An indictment has been filed against the defendant, Keith Wilkinson, charging him with the crimes of Murder in the Second Degree (two counts), Robbery in the First Degree, Burglary in the First Degree (two counts), Criminal Possession of a Weapon in the Second Degree, and Assault in the Second Degree (two counts) arising out of an incident alleged to have occurred on January 27, 2009 in the City of Mt. Vernon, County of Westchester, State of New York.

By decision and order filed and entered on May 13, 2010, the Honorable James Hubert ordered a Huntley/Dunaway/Wade/Rodriguez/Sandoval¹ hearing. These hearings were held before this Court on January 6, 2011 at which time police Detective Anthony Mitchell and Lieutenant Vincent Manzione testified as the only witnesses and on behalf of the People.²

FINDINGS OF FACT

The Court credits the testimony of the People's witnesses and makes the following findings of fact:

On January 27, 2009, Detective Anthony Mitchell, a twelve-year veteran of the

¹The Sandoval hearing will be held immediately prior to the commencement of jury selection.

²Prior to the commencement of the hearing, the defendant acknowledged that the three noticed confirmatory identifications were made by individuals who, in fact, were known to him, therefore alleviating the need for any hearing with respect to those identifications.

Mt. Vernon Police Department, was assigned to the Major Case Squad when he became involved in a homicide investigation at 613 South 10th Avenue in the city. Two victims were involved - the decedent had been shot in the head and the second victim, Fernando Cofresi, had been tied up and beaten several times. The detective spoke with Cofresi regarding the incident, and the investigation continued.

On January 6, 2010 Detective Mitchell and his partner received information about the case from Dania Sayers, the defendant's girlfriend, and on January 8, 2010, they met with her during the evening hours. Ms. Sayers told the detectives that approximately one year ago her boyfriend, Keith Wilkinson admitted to her, in substance, that he was involved in a home invasion, that he, and two others, tied up one victim and that he shot the other.

On January 13, 2010 the police again spoke with Fernando Cofresi about the incident. Armed with a photographic array, which contained the defendant's photograph in spot number four, the detectives went to meet Mr. Cofresi at his residence, showed him the array in their vehicle, and asked him if he recognized anyone. (The photographic array was admitted into evidence as People's Exhibit 50.) Mr. Cofresi took his time, viewed the array and stated, in substance "The eyes, I can't forget the eyes - that's him" and chose the photograph in the fourth position - the defendant's photograph. Without being instructed by the police, the witness wrote under the defendant's photo, "I believe this to be the person involved in the crime I was a victim of" and signed his name.

The defendant was arrested at approximately 6:10 pm on January 17, 2010 on Carpenter Avenue in the Bronx and transported to Mt. Vernon Police headquarters. Neither Detective Mitchell, nor Ossipo spoke with the defendant during the ten to fifteen

minute ride. The defendant was placed in the department's interview room, which was a well lit twelve by eighteen foot room with two windows, a table, seven chairs and a desk. Detective Ossipo advised the defendant of his Miranda rights in the presence of Detective Mitchell. (An exact copy of the department's Miranda warnings was admitted into evidence as People's 79.) After each warning was read to him, Detective Ossipo asked the defendant if he understood and the defendant responded "Yes." When asked "Do you understand each of these rights I have explained to you," the defendant responded "Yes." When asked "Having these rights in mind, do you wish to talk to us now?" the defendant responded, in substance, "I'm not signing nothing, but I'll talk to you." Thereupon, the defendant made the first of the noticed statement, beginning at approximately 6:30 p.m.

At approximately 9:30 p.m., Detectives Mitchell and Ossipo left the interview room to get the defendant some food and drink and Lieutenant Manzione entered the room. According to the Lieutenant, the defendant appeared comfortable and the two began some small talk. During the small talk, and at approximately 9:30 p.m., the defendant stated, in substance, "What if I was the one driving the car?"³

Upon their return to the interview room approximately one hour later, the defendant was provided with food and the detectives continued their interview. At approximately 2:30 to 2:45 a.m. the defendant was given an opportunity to speak with his girlfriend, Dania, in the presence of the detectives. During this time period the defendant made the second of the noticed statements.

None of the defendant's interview was videotaped by the police.

³This statement was noticed pursuant to CPL 710.30. The defendant's unnoticed statement that he has an Acura car is precluded.

CONCLUSIONS OF LAW

Following Detective Mitchell's meeting and conversation with the defendant's girlfriend, Dania Sayers, wherein she disclosed the defendant's admission to the murder, the police had probable cause to arrest the defendant.

As to the defendant's statements, the People have proven, beyond a reasonable doubt, that the defendant was properly advised of his Miranda rights, and that he knowingly, voluntarily and intelligently waived his rights prior to making any statements (see Miranda v. Arizona, 384US 436).

As a result, the defendant's motion to suppress the noticed statements is denied.

The defendant's motion to suppress Fernando Cofresi's photographic identification is granted to the limited extent that an Independent Source hearing is ordered. Although all the photographs used in the array are of black males, they do not appear to be of similar age or characteristics. The male depicted in photograph number one has his eyes at half mast, the male depicted in photograph number three appears substantially older than the defendant and all the other males, and the male depicted in photograph number six appears substantially heavier than the defendant. Most notably, the defendant's eyes, which the witness had indicated, he would never forget, appear larger and more open than almost all of the other males causing his photo to stand out from the others, thus calling undue attention to him, thereby creating a substantial likelihood that he would be singled out for identification.

As a result, an Independent Source hearing is ordered to determine if there exists a sufficiently reliable basis for Mr. Cofresi's in court identification.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
January 10, 2011



HON. SUSAN CACACE
County Court Judge

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