

People v Johnson

2011 NY Slip Op 34295(U)

November 10, 2011

County Court, Suffolk County

Docket Number: 01455-2010

Judge: Gary J. Weber

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COUNTY COURT: SUFFOLK COUNTY
STATE OF NEW YORK

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DECISION AND ORDER

THE PEOPLE OF THE STATE OF NEW YORK,

BY: GARY J. WEBER, J.C.C.

-vs-

DATED: November 10, 2011

CHAD JOHNSON,

CASE NO. 01455-2010

Defendant.

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The Defendant, near the completion of his cross examine Detective Michael Soto on November 4, 2011, sought to ask the detective about a confession in an unrelated robbery case. The People objected to the inquiry and a side bar was held outside the hearing of the jury. The Court provided both counsel with a copy of *People v. Jones, 193 A.D.2d 696*, and pending a more detailed factual recitation by the prosecutor about the other robbery case, the Court reserved decision. The Court ordered that Detective Soto was to remain subject to recall for the completion of cross examination. At the next court session the prosecution advised the court and defense counsel of additional facts concerning the robbery case.

PROCEDURAL BACKGROUND.

**The Defendant's Documentary Basis to Inquire
submitted on Friday November 4, 2011**

Defendant submitted to the Court a copy of a verified federal complaint, filed on September 14, 2011, in which it is alleged in paragraphs nine through thirteen and paragraphs seventeen through thirty-six, that on March 25, 2010, Detective Soto and others subjected Ms. Skipworth to coercive interrogation techniques from 11:30 a.m. until she signed a coerced confession at 5:30 p.m. The alleged coercion included a refusal to permit her to call an attorney and family members, assertions that she would be prevented from obtaining her Licensed Practical Nurse (LPN) license, and that her current license as a certified nursing assistant would be taken away; further that her

children would be taken from her; and that bail would be set so high she would never be released from jail.

The Defendant also submitted a copy of the statement of the bank teller from that robbery that was witnessed by Detective McQuaid. This statement indicated that a robbery had been committed at 10:20 a.m. on September 29, 2009 of the TD Bank located at 1806 Route 112 in Medford, New York. The teller described the perpetrator as a white female in her early twenties, five feet-five inches tall, with a light complexion and possibly light eyes, and wearing diamond stud earrings in her ears.

The Defendant has filed with this Court the minutes from the Court proceeding on September 15, 2010 before the Hon. Martin I. Efman, in which the District Attorney, by Assistant District Attorney Erin Cho, Esq., agreed to the dismissal of the robbery indictment.

These documents have been marked as Court Exhibit 5.

**Facts as Presented by the Prosecution to the Court
on Monday, November 7, 2011**

An indictment for Robbery in the Third Degree had been returned against a different defendant, Nyeshia Skipworth. Ms. Skipworth had become the focus of a robbery investigation when her former boyfriend implicated her in one of his robberies. Ms. Skipworth testified before the grand jury, nonetheless, an indictment was returned for the crime of robbery in the third degree. *People v. Skipworth, Ind. # 876-2010*. Kathleen Gearrity, Esq. of The Suffolk County Legal Aid Society, represented Ms. Skipworth on the indictment and served a notice of alibi in which it was alleged that Ms. Skipworth had actually appeared in the Family Court located in Riverhead, New York on the same morning as the alleged robbery had taken place in Medford, New York. The Family Court in Riverhead makes audio recordings of its proceedings, and Ms. Skipworth's appearance in Family Court on the date of the Medford robbery was a part of that court's record. The prosecution indicated that this audio recording was played for Detective John Oliva and he authenticated the voice on the court's recording as the voice of Ms. Skipworth. The prosecutor further advised that the teller in the robbery case had described the perpetrator as Caucasian, and Ms. Skipworth was a fair-skinned black person, and the Suffolk County District Attorney reached the conclusion that it could not prove the case beyond a reasonable doubt and agreed to dismiss the case pursuant to *CPL 210.20(1)(h)*.

**On Monday, November 7, 2011 Argument
was made on the record.**

Both counsel placed their arguments on the record and the Defendant submitted to the court a one page handwritten list of three questions that he was seeking to ask Detective

Soto when recalled for the completion of cross examination. *See Court Exhibit 7, redlines are by defense counsel withdrawing that question.*

The prosecution requested that it be permitted to obtain the minutes of the hearing transcripts from the hearing conducted pursuant to *General Municipal Law 50-h*, and decision was reserved pending the disclosure of that additional information.

November 8, 2011

The case continued after being closed for Election Day. At a conference in chambers the prosecutor acknowledged that he had reviewed the minutes of the *Skipworth 50-h* hearing. The Court provided both counsel with a copy of *People v Diaz, 85 A.D.3d 1047* for their consideration on this issue. The prosecution made a reduced plea offer on the case which provided that if the Defendant agreed to a determinate sentence of twenty-five years in prison, the prosecution would agree to a plea bargain to the crime of Manslaughter in the First Degree. This offer was conveyed by counsel for the defendant, placed on the record in open court with the defendant present, and was rejected.

DECISION

On February 16, 2011, February 17, 2011 and February 23, 2011 a combined *Mapp/Dunaway* and *Huntley* hearing was conducted in this case. The ADA on the hearings is the same Assistant on this trial and there is no reason to believe that the dismissal of the indictment against Ms. Skipworth had been disclosed to him personally prior to the hearings or at any time until the issue was raised by defense counsel at trial.¹ There is also no reason to believe that either Detective McQuaid or Detective Soto informed the trial prosecutor about: the dismissal of the Skipworth indictment; the Notice of Claim served in December of 2010 by Ms. Skipworth; or the fact that a federal civil rights action had been commenced against them by verified complaint.²

The gravamen of the Defendant's contention is that it has now been alleged in a verified complaint, filed in federal court, that only two months before the interrogation of Defendant Johnson in this case by Detective Soto, Detective Soto had participated in a coercive interrogation in which Ms. Skipworth's right to counsel had been violated and the tactics employed resulted in a demonstrably false confession. The Defense contends

¹It is plain to this court that the trial prosecutor has fulfilled his obligations in accordance with 22 NYCRR Part 1200, rules 3.4 and 3.8. As in *People v. Williams, 7 N.Y.3d 15 (2006)*, the facts subject to disclosure had been systemically cordoned from the trial attorney, and while there was an institutional delay in disclosure, defense counsel has use of this information for trial in an otherwise timely manner.

²The facts as discovered by defense counsel, and more fully described by the trial prosecutor have now been disclosed in accordance with the due process clause of the Fourteenth Amendment to the *United States Constitution* and Article 1, § 6 of the *New York State Constitution*. *See People v. Hunter, 11 NY3d 1 (2008)*; and *People v. Fuentes, 12 NY3d 259*.

this is ample good faith basis to cross examine Detective Soto about the *Skipworth* interrogation. Defense counsel is correct.

“A witness may be interrogated upon cross-examination with respect to any immoral, vicious or criminal acts which may affect his character and show him to be unworthy of belief, provided the cross-examiner questions him in good faith and upon a reasonable basis in fact.” *People v. Jones*, 193 A.D.2d 696. It is beyond cavil that a good faith basis has been demonstrated so as to permit the cross examination of Detective Soto concerning the circumstances of the *Skipworth* confession. The question for the court and both counsel is the extent, under the attendant circumstances, that the interrogation and confession in the *Skipworth* case may be litigated in this case. See *People v Diaz*, 85 A.D.3d 1047 (2nd Dept., June 21, 2011)

“Trial courts have broad discretion to keep the proceedings within manageable limits and to curtail exploration of collateral matters” *People v Hudy*, 73 NY2d 40, 56, 535 N.E.2d 250, 538 N.Y.S.2d 197, abrogated on other grounds *Carmell v Texas*, 529 U.S. 513, 120 S. Ct. 1620, 146 L. Ed. 2d 577), ‘[a] court's discretion in evidentiary rulings is circumscribed by the rules of evidence and the defendant's constitutional right to present a defense’ *People v Carroll*, 95 NY2d 375, 385, 740 N.E.2d 1084, 718 N.Y.S.2d 10; see *People v Hudy*, 73 NY2d at 57; *People v Grant*, 60 AD3d 865, 875 N.Y.S.2d 532; *People v Ocampo*, 28 AD3d 684, 685, 813 N.Y.S.2d 217).”

People v Diaz, 85 A.D.3d 1047 at 1049-1050

The Court in *Diaz*, in reversing the Defendant’s conviction for the crimes of Course of Sexual Conduct Against a Child in the Second Degree, and Endangering the Welfare of a Child, held it was error for the trial court to preclude the introduction of extrinsic evidence concerning another accusation of sexual abuse because that allegation against a third party may have been false. *Id.* at 1050-1051, *Chambers v. Miss.*, 410 U.S. 284; *Fourteenth Amendment to the US Constitution*; and *NY State Constitution Art. 1 § 6*; see also *People v. Smith*, 195 A.D.2d 112.


ORDER

ORDERED that the People are directed to recall Detective Michael Soto before the conclusion of their case in chief for the purposes of the completion of cross examination; and it is further

ORDERED that the Defendant will be permitted to cross examine Detective Michael Soto with respect to the questions submitted to the Court and now marked as *Court Exhibit 7*; and it is further

ORDERED that the minutes of *Skipworth 50-h* hearing shall be marked *Court Exhibit 8* and a copy provided to counsel for the Defendant.

The foregoing shall constitute the decision and order of the Court.



GARY J. WEBER, J.C.C.