

**People v Williams**

2012 NY Slip Op 33837(U)

November 8, 2012

Supreme Court, Kings County

Docket Number: 8593/10

Judge: Deborah A. Dowling

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MEMORANDUM

SUPREME COURT : KINGS COUNTY  
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PEOPLE OF THE STATE OF NEW YORK,

(Criminal Term, Part 1)

By: DOWLING, J.

- against -

Dated: November 8, 2012

Indictment No.: 8593/10

STEVE WILLIAMS

Defendant.

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On October 9, 2012, a combined *Wade/Huntley*<sup>1</sup> hearing was conducted before this Court. The People called Detective James Donoghue and Police Officer Evan Nielson. The defendant did not call any witnesses.

The defendant argues his statements and the identifications in this case should be suppressed. The defendant argues he was coerced into making statements in this case. The defendant also contends the identification procedures conducted with the witness were unduly suggestive in so far as one or more of the witnesses may have observed the defendant in police custody prior to viewing the lineup procedure. For the reasons stated herein, the defendant's applications are granted in part to the extent that the identifications by Chantel Long and Sherry Shaw are suppressed. The People are required to conduct an independent

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<sup>1</sup>Defense counsel strenuously argued the defendant was also entitled to a *Dunaway* hearing to establish law enforcement had probable cause to arrest the defendant. However, this matter was reviewed by Justice Firetog and based upon the circumstances of this case, this matter was sent to this Court part with a specific directive that a *Wade/Huntley* hearing be conducted. If there was a basis to conduct a *Dunaway* hearing, the Court would have been directed to do so.

source hearing with respect to Ms. Long and Ms. Shaw. The defendant's *Huntley* application is denied in its entirety.

### *Findings of Fact<sup>2</sup>*

On September 26, 2010, Detective James Donoghue was assigned as the lead investigator in a homicide. The alleged incident occurred during the early morning hours of September 26, 2012 around 3:22am, at 842 Rockaway Avenue in Kings County. Detective Donogue went to the subject location, at 4:40am, but, returned to the precinct when he was informed of the apprehension of a suspect in this case.

Police Officer Evan Nielsen was on routine patrol, within the vicinity of this incident, when he observed what appeared to be a dispute among a number of people, at 842 Rockaway Avenue. Officer Nielsen then observed an individual, later identified as the defendant, attempt to flee the location. The officer placed this individual in custody in connection with this incident. After apprehending the defendant, Officer Nielsen transported the defendant to Brookdale Hospital to determine whether complainant could identify the defendant as the perpetrator. However, when the officer arrived at the hospital he was advised the complaining witness was incapacitated and not in a position to make an identification. Officer Nielsen then transported the defendant to the 73<sup>rd</sup> precinct where Detective Donoghue took over the investigation.

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<sup>2</sup>The Court makes the following findings of fact based upon the credible testimony adduced at the instant hearing. The Court's findings of facts relate to this hearing alone and have no bearing upon the facts which must be established at the time of trial to prove the defendant's guilt beyond a reasonable doubt.

When the defendant arrived at the precinct, he was placed in an interview room, where the detective attempted to advise him of his *Miranda* warnings. The detective used a preprinted form and began advising the defendant of his constitutional rights. Initially the defendant signed his initial near the first warning but then refused to sign next to any other warnings. The defendant listened to the warnings but refused to sign the sheet. The defendant refused to sign the sheet but agreed to speak to the detective about this incident. The defendant made an oral statement regarding this incident.

After interviewing the defendant, the detective prepared to conduct lineups with two witnesses in this case. The detective contacted the store clerk where the alleged incident occurred, Bassam Alnajjar. Mr. Alnajjar was asked to come into the precinct to speak with the detective regarding this incident. Detective Donoghue prepared the lineup by getting fillers with similar physical characteristics to those of the defendant from a local shelter. The defendant was placed in the lineup, as the subject, in position 2, based on the defendant's selection to be in that position. When Mr. Alnajjar arrived at the precinct, he was segregated from the lineup area and the fillers.

Prior to viewing the lineup, the detective instructed Mr. Alnajjar, he would see six individuals and to let him know if he recognized anyone and where he recognized the person from. Mr. Alnajjar identified the person in position 2, the defendant, as someone who was in the store. However, Mr. Alnajjar stated the person was not in the store at the time of this incident.

Detective also contacted a second person, Alzabidi Ali Ebrahim, to come into the precinct, on September 26, 2010. When Mr. Ebrahim came into the precinct, the detective also instructed Mr. Ebrahim he would see six individuals and to identify whether he knew anyone and if so where he recognized that person from. Mr. Ebrahim identified the person in position 2, the defendant, as the person involved in the fight in the store. Before Mr. Ebrahim, viewed the lineup, the defendant was again given the opportunity to change his position in the lineup but elected to remain in the same position.

On September 27, 2010, the detective continued the identification procedure by contacting three additional witnesses to come into the precinct. The detective spoke with Sherry Shaw, Chantel Long and Brian Thomas. Sherry Shaw and Chantel Long came into the precinct together. Detective Donoghue also prepared this lineup by getting different fillers with similar physical characteristics to those of the defendant. The detective again availed the defendant of the opportunity to select his position in the lineup. The defendant availed himself of this opportunity to select his position and chose to sit in position 5. Once the defendant selected his position, the detective left the room and no other law enforcement personnel remained in the room. As a result, it appeared to the detective during the course of the lineup, the defendant changed his position in the lineup after law enforcement personnel left the room to get the witnesses to view the lineup. When Detective Donohue returned to the viewing area with Sherry Shaw, the defendant was in position 6.

The detective explained to Ms. Shaw she would see six individuals and to identify

whether she recognized anyone. Ms. Shaw viewed the lineup and identified the person in position 6, the defendant, as the person she saw running with a knife on the day of the incident. After Ms. Shaw viewed the lineup she was segregated from Chantel Long. Ms. Shaw was escorted out of the precinct. Ms. Long viewed the lineup next and she also identified the person, in position 6, the defendant, as the person she saw running with a knife.

The detective prepared a sixth lineup to be viewed Brian Thomas. Mr. Thomas was contacted to come into the precinct to discuss this case. Prior to the witness coming into the precinct, the detective again prepared the lineup by getting fillers who matched the defendant's physical attributes and provided the defendant with an opportunity to select his position in the lineup. The defendant elected to sit in position 1. The detective also had the defendant and fillers wear baseball caps and remain seated to minimize any hairstyle and height disparity.

Mr. Thomas was kept segregated from the lineup area and the fillers. Mr. Thomas also did not have contact with the other witnesses who had come into the precinct to view the lineup. When it was time for the Mr. Thomas to view the lineup, the detective instructed him to look at the individuals and let him know whether he recognized anyone and where he recognized the person from. Mr. Thomas identified the person in position 1, the defendant, as the person who stabbed the guy. Upon completion the final lineup procedure the defendant's arrest was processed.

### *Conclusion of Law*

The initial burden of proof at a suppression hearing rests with the People to establish law enforcement acted properly and legally under the circumstances. *People v. Baldwin*, 25 N.Y. 2d 66 (1969). While the defendant argues he was entitled to a hearing on the issue of whether law enforcement had probable cause to arrest him, there is no legal basis for the defendant's contention. The case was specifically sent into this Court part for the purpose of conducting a *Wade/Huntley* suppression hearing. Since the case was sent into the part for specific hearings, the Court can only assume the defendant failed to adequately move or substantiate legitimate grounds warranting a hearing on the issue of probable cause.

With respect to the defendant's application regarding suppressing statements made to law enforcement, the application is denied. The burden of proof at a *Huntley* hearing lies with the prosecution. The People must establish the voluntariness of the defendant's statement beyond a reasonable doubt. *People v. Huntley*, 15 NY2d 72 (1965). In meeting its burden, the People must establish that a defendant in custody was advised of his constitutional rights prior to being subjected to interrogation. Additionally, the voluntariness of a defendant's statement is an issue of fact to be determined from the totality of the circumstances.

The defendant's claim he was improperly subjected to custodial interrogation is unavailing. The defendant contends he was subjected to custodial interrogation without being advised of his *Miranda* rights. However, the credible facts adduced at the hearing does

not substantiate the defendant's claim. The People established the defendant was advised of his right to remain silent by credible testimony adduced from Detective Donoghue. The detective's credible testimony establish, although the defendant refused to initial the pre-printed form used to advise him of his rights, he was nonetheless advised of his rights. There is no legal mandate law enforcement present a signed sheet by the defendant bearing the defendant's signature and initial to establish the defendant was advised of his rights. In fact there is no legal requirement as to how the defendant is advised of his rights. The People must only establish the defendant was advised of his rights, understood those rights and knowingly and voluntarily waived those rights.

Here, the evidence established the defendant was advised of his rights and in fact duly waived those rights in favor of making a statement to law enforcement. There is no evidence the defendant was coerced, duped or tricked into making a statement. Further, the credible facts adduced at the instant hearing establish law enforcement acted properly in investigating this case. There was no improper conduct on the part of law enforcement in questioning the defendant. In fact the record is clear the defendant was properly advised of his *Miranda* warnings, understood those warnings and instead waived those rights prior to being questioned by law enforcement. As such, the defendant's statements to law enforcement will not be suppressed.

With respect to the defendant's application seeking to suppress the identifications in this case, the application is granted in part. When the identification procedures used by law

enforcement are challenged by a defendant, the initial burden of proof lies with the prosecution to establish the identification process was not tainted or unduly suggestive in violation of the defendant's constitutional rights. *United States v Wade*, 338 U. S. 218. The People have the initial burden of establishing the reasonableness of police procedure used in the case. *People v. Ortiz*, 90 N.Y.2d 533 (1997).

If the People meet their initial burden of proof, the defendant is then charged with establishing law enforcement in fact impermissibly tainted the identification procedure. Suppression of identification evidence is necessary if that evidence is the result of suggestive conduct on the part of law enforcement. It is incumbent upon Courts to eliminate any substantial likelihood of misidentification when considering issues raised on a suppression hearing.

There exists no evidence of suggestiveness or improper conduct on the part of law enforcement in regard to the identification procedures conducted with witnesses, Mr. Alnajjar, Mr. Ebrahim and Mr. Thomas. In fact law enforcement's conduct was reasonable under the circumstances. The People submitted a photograph which memorialized each lineup. The photograph depicts fillers who appear similar in age, weight, height and build to the defendant. Law enforcement took extra measures to ensure fairness in the lineup, in so far as all the participants remained seated and wore head covering to minimize any potential height or hairstyle disparity.

Moreover, the defendant was availed of the opportunity to select the position he

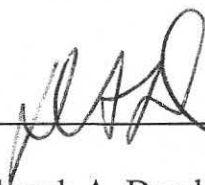
desired to sit and did so elect to be in position two. Detective Donoghue also took precautions to ensure the witnesses did not interact with each other after viewing the lineup and did not have an opportunity to see the defendant or any of the fillers at the precinct prior to viewing the lineup. The evidence clearly establishes the witnesses identified the defendant based on their recollection of what they observed on the night of the incident. Law enforcement's conduct played no role in the identification. Accordingly, the defendant's *Wade* application is denied.

However, the identification by Ms. Long and Ms. Shaw shall be suppressed. The composition of the lineup was not unduly suggestive. Notwithstanding, the facts and circumstances which transpired prior to the lineup tainted the lineup. Namely, testimony adduced during the course of this hearing, established the two witnesses may have observed the defendant in police custody when the defendant was initially transported to Brookdale hospital by Officer Nielsen. There is no evidence of nefarious intent on behalf of law enforcement. However, the fact remains the lineup may have been tainted by this circumstance. Accordingly, the People are required to conduct an independent source hearing in order to determine whether witnesses, Ms. Long and Ms. Shaw, had an independent basis for their identification of the defendant as the perpetrator in this case.

This Court finds the People have met their burden of proof on this *Huntley* hearing. The defendant's *Wade* application is granted to the extent detailed herein. The identification by witnesses, Mr. Alnajjar, Mr. Ebrahim and Mr. Thomas shall not be suppressed. Ms. Shaw

and Ms. Long's identification shall be suppressed and the People are required to conduct an independent source hearing.

This shall constitute the decision and order of this Court.



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Deborah A. Dowling, JSC