

People v Bodie

2012 NY Slip Op 33851(U)

May 23, 2012

Supreme Court, Westchester County

Docket Number: 11-1218

Judge: Barbara G. Zambelli

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FILED

MAY 24 2012
TIMOTHY C. IDONI
CLERK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON May 24 2012
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
THE PEOPLE OF THE STATE OF NEW YORK

- against -

DAMEON BODIE,

Defendant.

-----x
ZAMBELLI, J.

Indictment No: 11-1218

DECISION AFTER HEARING

FILED
TIMOTHY C. IDONI
CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for the crimes of murder in the second degree, manslaughter in the first degree and criminal possession of a weapon in the third degree, for acts allegedly stabbing another man to death on or about September 2, 2011, in the City of Mount Vernon.

By decision and order dated February 16, 2012, the Honorable James Hubert, granted defendant's motion to suppress evidence solely to the extent of ordering a Huntley hearing, Wade hearing and a Dunaway hearing on the identification to determine if the identification was the product of an unlawful seizure or arrest. The hearing was held on May 21, 2012 wherein Police Officer Weinerman of the New Rochelle Police Department; Detective Nicholas Stella, Detective John Gamble, and Police Officer Montika Jones all from the Mount Vernon Police Department gave testimony as well as the defendant.

FINDINGS OF FACT

The credible testimony adduced at the hearing on this case established that on

September 2, 2011 at approximately 11:45 p.m., Police Officer Weinerman responded to the emergency room in the Sound Shore Medical Center on the report of a victim with stab wounds. The hospital had contacted the police when defendant appeared in the emergency room with stab wounds. Sergeant Conca arrived at the hospital at the same time as Police Officer Weinerman. Police Officer Kane arrived as well. They spoke to the hospital staff who reported that defendant had appeared with blood and lacerations on both of his hands. He was not wearing a shirt but had wrapped his shirt around his hands. They went to defendant's room. Police Officer Weinerman asked defendant what had happened. Defendant did not respond. The police officer needed to know if defendant was a victim in order to send out officers to locate suspects. The police officer pressed defendant who stated he was jumped by two Mexicans on Main street near Maple Avenue in New Rochelle. He was asked his name which he gave as Marcus Johnson and gave his date of birth. The police officer checked the name for outstanding warrants. Defendant was asked where he lived to which defendant responded he was homeless. Asked for identification he responded he did not have any identification. The police officer observed a bulge in defendant's pocket which appeared to be a wallet. Asked if he had a cell phone defendant responded he did not even though the police officer observed a phone in defendant's pocket. Defendant was unable to give a description of the Mexicans or direction of travel of the Mexicans. He was jumped in the area of the LaCoave Club. Police Officers were dispatched to the area but found no evidence of an incident. No 911 calls had been made concerning this incident. The police officer observed on defendant's jeans and sneakers large amounts of blood. The police officer asked defendant if he

could go into defendant's pockets. Defendant responded he could go into his pocket but that the officer didn't have a right to go into his pockets. Police Officer Kane took defendant's wallet from his pocket whereupon defendant gave his true name. He asked them not to make calls on his cell phone; he would tell them what had happened whereupon Police Officer Weinerman advised defendant orally of his Miranda rights. He was advised on September 3 at 12:15 a.m. Defendant stated he understood his rights and would speak to them. Defendant told them he was on Franklin Avenue in Mount Vernon when his girlfriend's ex boyfriend attacked him with a knife. A fight ensued. The ex boyfriend was in bad shape. He didn't know if he was dead. Defendant appeared scared, upset, withdrawn, shaking. He was mumbling that he may have killed that guy. He would not give further details. New Rochelle Police contacted the Mount Vernon Police Department which had received a report of a homicide at the location of 211 Franklin Avenue. Detective Stella of the Mount Vernon Police Department arrived at the Medical Center. Police Officer Stella was advised by the New Rochelle police officers that defendant had been given his Miranda rights. Detective Stella asked defendant if he had been advised of his rights to which defendant responded "yes." At defendant's bedside while defendant's hands were being stitched by a nurse, Police Officer Stella asked defendant what had happened. Defendant was distraught. He said he thought he killed the guy. He said the guy had jumped out of the bushes, jumped him, and pulled a knife on him. Defendant then broke down crying. Police Officer Stella left to get an evidence kit from his car and returned. Police Officer Stella returned with the evidence kit and continued speaking with defendant who made the statements contained in sum and

substance in the People's CPL 710.30 notice. Police Officer Stella took pictures of the defendant. He asked defendant if he would mind giving a DNA sample, explaining that he did not have to give the sample. Defendant said he didn't care, they could go ahead and take the sample. Defendant was brought to Mount Vernon Police Headquarters and placed in the interview room at approximately 4:00 a.m. Detective Gamble and Detective Castellano were in the interview room with him. They spoke to defendant intermittently for approximately 3 - 3 ½ hours. Defendant made a series of statements contained in sum and substance in the People's CPL 710.30 notice. At 7:30 a.m. defendant's statement was audiovisually recorded. He was re-advised of his Miranda rights and signed the Miranda form in evidence. He spoke to the detectives for approximately 35 minutes. During the time he was in the interview room he asked to make a call to his parents. He was told he would be permitted at a later time. He was given something to drink and taken to the bathroom.

On October 16, 2011, Police Officer Jones met with Kizia Knowles to take her statement and to show her a photo array. Prior to showing Ms. Knowles a photo array, the police officer showed her a picture of the defendant with Ms. Knowles walking into the hospital the night of September 2, 2011. Police Officer Jones then told Ms. Knowles that she may or may not see the person she dropped off at the hospital in the array. Ms. Knowles identified the defendant's picture, signed and dated the array. Ms. Knowles never saw defendant before the night of September 2, 2011.

CONCLUSIONS OF LAW

At the outset, the court discredits the defendant's testimony. Defendant's answer that he could not recall or wasn't sure to almost every question by the District Attorney renders his testimony incredible. He was hesitant, at times mumbled and often looked over to his attorney before answering.

The statements defendant made in the hospital prior to the administration of Miranda warnings were not the product of custodial interrogation. A reasonable person, innocent of any crime, would not have thought he was in custody if he was in the defendant's position (People v. Yukl, 25 N.Y.2d 585). Defendant was in the hospital being treated for lacerations to his hands. He was not the subject of a police investigation seeking inculpatory statements. The police officers were questioning him to determine if he had been the victim of a crime requiring a prompt investigation on their part to locate suspects. The defendant was given Miranda warnings after he told them he would tell them what happened after asking the police not to use his cell phone to call anyone. Defendant was given each of his rights, acknowledged he understood his rights, and knowingly voluntarily and intelligently waived his rights. In the hospital he voluntarily consented to the taking of a buccal swab for a DNA sample. Thereafter, in the interview room in the Mount Vernon Police Department he was re-advised of his Miranda rights. Although appearing tired, he did not at any time assert his right to remain silent. He did not request that they end the interview because he was in pain or suffering other discomfort. There is no showing he was coerced. He did not ask for food. He was given something to drink. Accordingly, the People have established beyond a reasonable doubt that his

statements were voluntarily made (See, People v. Baity, 139 A.D. 2d 521; People v. Tarsia, 50 N.Y.2d 1).

The photo array was not the product of an unlawful arrest. With regard to the photo array, the Court ruled from the bench that the police arranged procedure was unduly suggestive. An independent source hearing will be held prior to the witness testifying, a procedure agreed upon by the parties.

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

Dated: White Plains, New York
May 23, 2012



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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