

People v Sanchez

2012 NY Slip Op 33855(U)

January 30, 2012

County Court, Westchester County

Docket Number: 10-0875-01

Judge: Barbara G. Zambelli

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FILED
AND ENTERED
ON Jan. 30, 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 -

DANIEL SANCHEZ, RONELL JONES
a/k/a RONELI JONES and BRIAN ROACH,

Defendants.

-----X

ZAMBELLI, J.

Indictment No: 10-0875-01

DECISION AFTER HEARING

FILED
JAN 30 2012
TIMOTHY G. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted on five counts of murder in the first degree, six counts of murder in the second degree, four counts of attempted murder in the second degree, four counts of assault in the first degree, five counts of criminal possession of a weapon in the second degree, robbery in the first degree and burglary in the first degree.

By decision and order dated February 18, 2011, the Honorable Barry Warhit granted Defendant Sanchez's motion to suppress to the extent of ordering: Dunaway, Huntley and Wade Hearings. The following witnesses gave testimony at the hearings held on January 4, 2012 and January 11, 2012: From the Yonkers Police Department, Detectives Scott Griffith, Marvin Oakley, Vincent DiDio, Christian Koch, Detention Officer Daniel Noll.

FINDINGS OF FACT

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

6, 2010, Kasheem Little and Carlton McLeod were shot and killed in Apartment 930 located at 77 Locust Hill Avenue in the City of Yonkers. Four additional individuals were shot in the same apartment; Harrell Hoyt, Quenna Rowson, Larry Fails and five year old FS¹. Detective Scott Griffith of the Yonkers Police Department was called in to investigate the shooting with his partner Detective Marvin Oakley. The detectives arrived at the crime scene shortly after 3:00 a.m. whereupon they observed the two dead males. Later that day they went to Jacobi Hospital where Fails, Hoyt and Rowson were being treated. Detective Griffith spoke to Rowson who identified the shooters as Ronelli Jones, Daniel Sanchez and Brian Roach. Rowson has known these individuals for years. Fails told Detective Griffith that Jones and Sanchez were the shooters. Fails knew both of the shooters by name. He knows them from prior engagements. Hoyt would not identify the shooters to Detective Griffith. Hoyt was agitated, upset and in pain. Hoyt said he knew the shooters but would handle it himself. The Detectives returned to the Detective Division to further the investigation and returned that day to Jacobi Hospital at approximately 3:00 p.m. with photo arrays for each of the victims. They first went to Rowson. Detective Griffith read the procedure contained in Exhibit 1 to Rowson. Rowson was then shown the photo array in Exhibit 1 and identified Ronelli Jones, in box three, as the person who shot her. She then circled and initialed the picture. Exhibit 2 was shown to Rowson following Detective Griffith's repetition of the instructions for the array procedures. She identified Daniel Sanchez from the photo array as the person with another gun who was trying to rob her and her friends. She circled Sanchez' picture and initialed the picture. Detective Griffith

¹Name changed to "FS" in order to protect identity.

then proceeded to Fails' hospital bed with Exhibit 3. Detective Griffith read the photo array procedure contained in Exhibit 1 to Fails and show Fails the array. Fails identified Ronelli Jones in photo 5. Detective Griffith repeated the photo array procedure to Fails and showed Fails Exhibit 4. Fails identified Daniel Sanchez by name and put Sanchez's initials on Sanchez's photo. Fails identified Sanchez as the person who was robbing him and who tried to kill him in his apartment.

On July 7, 2010, at approximately 10:00 a.m., Detective Griffith and Detective Oakley went back to Rowson's hospital room with a photo array, Exhibit 5. Detective Griffith read the instructions for the photo array from Exhibit 1 to Rowson. Rowson identified Brian Roach in box three as the guy that came into the apartment robbing them with a gun. Rowson circled the box and initialed it. Detective Griffith and Detective Oakley went to Fails room that same day and showed Fails Exhibit 6 after reading the same instructions previously read to Fails. Fails identified Brian Roach in the first box as the person who came into the apartment robbing and shooting.

On July 17, 2010, in the early evening, Detective Didio went to 4414 Murdock Avenue, Bronx after members of the 47th Precinct had reported a suspect from the Locust Hill shooting was at that location. Members of the Yonkers Police Department and New York Police Department were conducting a surveillance of the location. The area was surrounded by members of law enforcement. Detective Oakley and Sergeant McCue arrived at approximately 6:30 p.m. Detective Oakley was there for approximately one hour when he observed a female walk down the stairs to sit on the front stoop. After approximately fifteen minutes, a child joined the female. Detective Oakley pulled up to her,

identified himself and explained he was there on a homicide investigation. He said he was looking for an individual that may be in the apartment. He showed the female three photos. She indicated that photo of the person in the middle (Sanchez) was inside. Detective Oakley asked the female to summon her husband who came down the stairs. The husband said there the approximately seven people up there including the man in the photo. He told the Detective they could go in. Detective Oakley went to the stairs and started yelling up the stairs, "Police" announcing himself. Other detectives were surrounding the home. Detective Oakley and Sergeant McCue were standing on the front stairs leading to the doorway yelling loudly "police, police, everybody come down." Females came down the steps, one of whom Detective Oakley knew to be Sanchez's girlfriend. As the two Detectives were going up the stairs, with guns drawn, Detective Oakley saw a bedroom. He heard noises come from the bedroom and yelled again, "police, police come out." He then saw the curtains swaying and that the baby bars had been removed from the window. Detective Oakley went to the window and yelled "he's out the window" loudly. Detective Didio ran around the house to the rear window where an individual, Defendant Sanchez, had jumped out and was being cuffed. As Detective Nowak was placing Sanchez in a police vehicle, Sanchez made a run for it, a pursuit ensued and Sanchez was apprehended in an alleyway. Sanchez was captured at approximately 7:40 p.m. Detective Oakley stayed at the Murdock Avenue location to search the apartment. He located a 40 caliber handgun, the butt of which was hanging out of a mattress in plain view. Clothing was recovered from the floor. At 8:02 p.m. Sanchez was transported to the Yonkers Detective Division. He arrived at 8:22 p.m. and was placed

in a holding cell. Sanchez made no statements en route to the Detective Division. He never requested an attorney. Detectives Griffith and Oakley met with Sanchez at approximately 10:00 p.m. in an interview room. Detective Oakley read Sanchez his Miranda warnings from Exhibit 17. Sanchez said he wished to speak to them whereupon he made statements contained in sum and substance in the People's 710.30 notice. Sanchez received food and regular breaks. He was not handcuffed. At approximately 2:00 a.m. on July 18, 2010 the interview terminated. He then was asked to consent to a DNA sample which he refused. The interview as terminated at 2:00 a.m. Sanchez never asked for an attorney. He was told by the Detectives he was being charged with the Locust Hill shooting on the charge of murder. He was transported to central booking where he was booked on the charge of murder and thereafter housed in the city jail. Later that same day, July 18, 2010, in the afternoon, Yonkers City Jail Detention Officer Daniel Noll was asked by Sanchez if he knew the officers who had brought him in and talked to him the previous night. Sanchez wanted to talk to them but didn't know who they were. Detention Officer Noll informed booking that Sanchez wanted to speak to the arresting officers.

Detective Oakley had a sector car transport Sanchez from the jail to the Detective Division. Sanchez was brought back to the interview room. Sanchez said he wanted to talk to them. He started talking to them immediately. Detective Oakley told him to hold on because he first wanted to read him his rights. He wanted the interview on tape. The Detectives immediately started the tape to record the conversation. Sanchez said he knew his rights, and he would sign. At 8:45 p.m., July 18, 2010, Sanchez was re-read his Miranda rights from Exhibit 18. The audio visual recording was played during the hearing.

After being read his rights, Sanchez was asked the waiver question if he wished to talk to them, to which Sanchez answered "No." Detective Oakley, surprised by the answer, since Sanchez had asked to speak to them, asked "you don't want to talk?" The following conversation ensued:

Sanchez: "I do want to talk, but not to you guys right this second. Maybe I should have the lawyer, maybe the DA needs to be here. I'm gonna give you guys more information than you probably I don't even understand like Imma gonna tell you everything, everything."

Oakley: But you wanna give it to us now, talk now?

Sanchez: Did, like alright. This is why I don't wanna talk to you guys right now, the same reason why I told you.

Griffith: What's that?

Sanchez: That you guys is not the ones that gonna prosecute me.

Griffith: Yea but we have to go and tell the bosses and we gotta tell the DA once we tell them what we have maybe we can get the ball rolling and maybe we can get this guy to come in.

Sanchez: I just told you. I can, I can get. Alright. I know somebody that brings guns in Tennessee.

Oakley: Alright but.

Sanchez: And and and I and and I know stuff about the other murder.

Oakley: Danny, I understand you a hundred percent but before you start going I have to give you these you gotta acknowledge it.

Sanchez: No. Oh gimme.

Oakley: I can't you know... And and you acknowledge and understand your rights?

Sanchez: Yes I acknowledge it, I understand that I ...

After which the Detectives and Defendant continued to talk. At the end, Sanchez was given something to eat.

On July 19, 2010, the Detectives met Hoyt and Fails in a Hampton Inn hotel room in Yonkers. Hoyt was taken to a separate conference room. Fails was not present when Detective Griffith read the photo identification procedure from Exhibit 7 to Hoyt and showed him Exhibit 8. Hoyt identified Sanchez, in box 2 as the person who shot at him at 77 Locust Hill Avenue. Hoyt circled and initialed Sanchez's photo.

CONCLUSIONS OF LAW

At the outset, the Court finds the police had probable cause to arrest the Defendant. He was identified by Fails and Rowson on July 6, 2010 as one of the individuals who had shot and robbed the people in the apartment at 77 Locust Hill Avenue, Yonkers, New York on that date.

The photo array procedure employed for each of the three victims was in all respects proper and not unduly suggestive. (see, People v Velez, 222 A.D.2d 625, lv. den. 88 NY2d 887; People v Edwards 199 A.D.2d lv. den. 83 NY2d 804). Furthermore, each victim knew Sanchez prior to the day of the shooting. The photo arrays were merely confirmatory. (see, People v Rodriguez, 79 NY2d 445)

The statements made on the night of Defendant's arrest, July 17, 2010 were made after Defendant had been advised of each of his Miranda rights and knowingly, voluntarily, and intelligently waived his rights and spoke to the Detectives. Thus, these statements

were voluntarily made beyond a reasonable doubt.

Sanchez' request to Detention Officer Noll to speak to the Detectives was not the product of custodial interrogation.

With regard to the recorded statements the night of July 18, 2010, the Court notes that since Defendant was continuously in custody and had been advised of his Miranda warnings less than 24 hours before and had waived his rights, the police were not required to re-administer his Miranda rights. It is well settled that where a person in police custody has been issued Miranda warnings and voluntarily and intelligently waives those rights, it is not necessary to repeat the warnings prior to subsequent questioning within a reasonable time thereafter, so long as the custody has remained continuous. (People v Edmir Gega, 74 A.D.3d 1229). Nevertheless, the Detectives re-advised Defendant of his rights.

Defendant's primary challenge in his suppression motion and during the hearing was to the taped statement he made in the Detective Division the night of July 18, 2010. He asserts he unequivocally exercised his right to remain silent and he unequivocally requested an attorney.

The standard for review of each of these contentions is fundamentally the same. The assertion by a defendant of his right to remain silent and his right to a lawyer must be clear, unequivocal and unqualified. (People v. Glover, 87 NY2d 838, People v Pierre, 309 A.D.2d 570, People v Caruso, 34 A.D.3d 860 lv den 8 NY3d 879, People v Horton, 46 A.D.3d 1225, lv den 10 NY3d 766 People v Madison, 135 A.D.2d 655, 658, affd 73 NY2d 810). "Whether the defendant unequivocally invoked his right to counsel is a mixed

question of law and fact that must be determined with reference to the circumstances surrounding the request, including the defendant's demeanor, manner of expression, and the particular words found to have been uttered by the defendant." (People v Mitchell, 2 NY3d 272, 276; People v Glover, 87 NY2d 838, 839; People v Jones, 21 A.D.3d 429). The question is whether "a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." (Davis v United States, 512 U.S. 452, 459; People v Jones, 21 A.D.3d at 429).

The circumstances to consider include whether the Defendant used "objectively clear language" and evidenced "no internal debate whatsoever" (Wood v Ercole, 644 F3d 83 at 91-92; People v Harris, 2012 NY Slip Op 00225 dec January 10, 2012, Appellate Div, Second Dept.); what if any response was made by the interviewing officer (see, People v Porter, 9 NY3d 966; People v Wood, 40 A.D.3d 663); the events following the comment itself (People v Powell, 304 A.D.2d 410).

Defendant argues his answer "No" was clear and unequivocal and therefore, the Detectives further questions did not scrupulously honor his right to remain silent. The Court must look to the circumstances surrounding the Detective's response. The Detective was surprised by the answer since Defendant had requested to meet with them. Thus the question "you don't want to talk?" was for the purpose of clarifying Defendant's answer since Defendant was the person who initiated and sought the interview with the Detectives. In response to the Detective's question, Defendant's stated "I do want to talk but not to you guys right this second. Maybe I should have the lawyer, maybe the DA needs to be here. I'm gonna give you guys more information that you probably, I don't even understand like.

I'mma tell you everything, everything", which clarified that Defendant wanted to talk in order to let the authorities know he was in a position to give them valuable information. The context of Defendant's statement that "maybe I should have the lawyer, maybe the DA needs to be here" makes clear that defendant was not requesting a defense lawyer at all, but rather was requesting to speak to a person with authority to negotiate a deal for him, ie., a prosecutor, as indicated by his further explanation to the Detectives "that you guys is not the ones thats gonna prosecute me." This context establishes that defendant's concern was negotiating with the District Attorney's office for the best deal possible for the Locust Hill crimes. The ensuing interview is, in sum and substance, Defendant negotiating on behalf of himself by offering information he had on other crimes so as to get the best deal on the Locust Hill crimes. He didn't want to give up his information unless he got something in return. He was told the Detectives couldn't make any promises. He did not request a lawyer or assert his right to remain silent. Rather, he freely spoke to the Detectives during the entire interview. Thus, the circumstances surrounding his statements establish that Defendant neither wished to exercise his right to remain silent, nor did he invoke his right to counsel.

"A court generally must look to the totality of the circumstances to determine the voluntariness of an inculpatory statement (see, *People v Anderson*, 42 NY 2d 35, 38 [1977])." In sum, Defendant knew his rights having been advised of them the previous night; he waived his rights the previous night; he asked to speak to the Detectives and told them that he knew his rights; he once again acknowledged he knew his rights after being re-advised of them and again waived his rights. His statements were in all respects

voluntary and not the product of improper police conduct (see, People v Bridges, 16 A.D.3d 911).

Accordingly, the motion to suppress is in all respects denied except to the extent that the People are barred from using his refusal to consent to a DNA sample on their case in chief.

Dated: White Plains, New York
January 30, 2012



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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