

People v Williams

2013 NY Slip Op 34071(U)

April 3, 2013

County Court, Westchester County

Docket Number: 12-1101

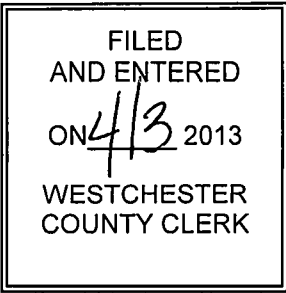
Judge: Barry E. Warhit

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

JAERUE WILLIAMS,

Defendant.

Indictment No.: 12-1101

-----X

WARHIT, J.

By order to show cause, counsel for the defendant has moved, pursuant to CPLR § 2221, for this court, to reconsider its previous decision which denied defendant's application for suppression of physical property or, in the alternative, for a Mapp hearing on grounds of newly discovered information and for this court to reconsider the scope of redaction ordered with respect to a previously sealed search warrant affidavits. Additionally, through the within application, the defendant seeks an order directing a Franks/Alfonito hearing.

In consideration of the defendant's application, this court has read and considered the order to show cause and affirmation and memo submitted by counsel for the defendant, Elizabeth A. Hume, Esq. and the affirmation in opposition filed by Assistant District Attorney V. RaShawn Woodley. Based upon these submissions, the order to show cause is disposed of as follows.

Procedural Background

Defendant, Jaerue Williams, was indicted, under indictment number 12-1101 for, on or about August 12, 2012, having committed one count of Burglary in the Second Degree, once count of Petit Larceny and two counts of Criminal Mischief in the fourth degree.

On or about November 13, 2012, counsel for the defendant filed an omnibus motion seeking relief including, but not limited to, suppression of physical evidence. The People filed an affirmation in opposition and memorandum of law in response thereto on December 4, 2012. In their answering affirmation, the People disclosed the property at issue had been seized subsequent to the issuance of several search warrants which were issued upon sealed affidavits. By Reply Affirmation, dated December 11, 2012, the defendant moved to unseal the search warrant affidavits. The People, filed a Supplemental Affirmation in Opposition to the defense's application to unseal.

On February 5, 2012, this court rendered a judicial determination with respect to the omnibus motion and the additional issues raised in the Reply. In relevant part, said Decision and Order denied the defendant's motion to suppress physical evidence and having determined the property was seized by valid search warrants, denied the defendant's application for a Mapp hearing. Further, this court directed the affidavits submitted in support of each search warrant issued in connection with the burglary charges be unsealed and be provided to the defendant with court approved redactions. This court also ordered the People to provide the warrant orders and search returns and directed that, upon receipt of same, the defendant could move for a hearing to

determine whether the evidence seized was within the scope of the issued warrants.

The defense filed the within order to show cause on March 1, 2013. The People filed their answering affirmation on March 12, 2013.

I. MOTION TO SUPPRESS SNEAKERS AND SHOES AS HAVING BEEN RECOVERED OUTSIDE THE SCOPE OF THE WARRANTS ISSUED

This branch of the defendant's order to show cause is granted to the limited extent that a hearing shall be held to determine whether the items seized were within the scope of the search warrants. In particular, such hearing shall address whether the eight (8) pairs of sneakers and five (5) pairs of boots which were seized in relation to the search warrant signed by Judge Robert A. Neary on August 18, 2012, upon the application of Det. Richard Carroll of the Village of Mamaroneck Police Department, was lawful (see generally, Mapp v. Ohio, 367 US 643; and see, CPL § 690.05[2][a])(requiring a search warrant to be issued for the purpose of seizing designated property or kinds of property).

II. MOTION TO CONTROVERT LAW ENFORCEMENT OFFICER'S VERACITY

The application for a hearing, pursuant to Franks v. Delaware and People v. Alfinito is denied (Franks, 438 US 154 [1978]; Alfinito, 16 NY2d 181 [1965]). The defendant herein has not made a substantial preliminary showing that Det. Cristiano knowingly and intentionally, or with reckless disregard for the truth, intentionally included a false statement in the warrant affidavit and, further, has not demonstrated such allegedly false statement was necessary to the finding of probable cause which

underlies the warrant (see, Franks v. Delaware, 438 US at 155; and see, People v. Panaro, 167 AD2d 951 [4th Dept. 1990])(holding a hearing on a defendant's motion is not required where a defendant fails to make the required substantial preliminary showing); and see, People v Ingram, 79 AD2d 1088 [4th Dept. 1981]).

In the present case, the defense alleges a “blaring inconsistency” between affidavits Det. Cristiano swore to before Judge Neary on August 17, 2012 and August 22, 2012. In support of this assertion, the defendant highlights that in the warrant application for cell tower data, to which the detective swore on August 17, 2012, he referred to the black male he had seen on surveillance video entering and exiting a residence at 6 Oak Lane in Larchmont and speaking on a cellular telephone merely as the “suspect”. However, in an affidavit the detective swore to on August 22, 2012, the detective stated that immediately upon observing the video, he had recognized the black male to be Jaerue Williams, with whom he had come into contact with on many occasions during his law enforcement career.

The detective’s affidavits are not inconsistent, let alone glaringly so. There is no basis to conclude Det. Cristiano did not immediately recognize the suspect simply because he did not include this information in his August 17, 2012 affidavit. In that affidavit, Det. Cristiano neither stated he could or could not identify the black male suspect. Moreover, the defense’s theory-- that if Detective Cristiano knew the black male to be Jaerue Williams he would not have referred to him merely as the suspect-- is undercut by the fact that in the paragraph directly following the one in which Det. Cristiano identifies Williams, he again refers to him as the “male suspect” (Hume Affirmation, Exhibit B, ¶¶ 7 and 8).

For the foregoing reasons, this court finds the defendant has not made a "substantial preliminary showing that a false statement was knowingly and intentionally included" in Detective Crisitano's affidavit in support of the applications for a warrant for cell tower information or for the warrant to search the defendant's cellular telephone (People v. Panaro, 167 AD2d 951 [4th Dept. 1990], citing, People v Ingram, 79 AD2d 1088 [4th Dept. 1981] and People v Solimine, 18 NY2d 477 [1966]).

Further, the alleged, albeit unproven, falsity does not bear upon the probable cause finding for either the August 17, 2012 or August 22, 2012 warrants. With respect to the search warrant for cell tower data, issued on August 17, 2012, the probable cause asserted included video surveillance depicting the crime depicting the suspect using a cell phone at the crime scene coupled with Det. Crisitano's personal knowledge, from past experience and investigations, that "when a cellular telephone is used to make a call, in most cases the closest cell tower is the one that the cellular network uses to place a call" (Hume Affirmation, Exhibit A, Crisitano Application, ¶ 7). Neither the identity of the male or Det. Crisitano's knowledge of his identity of lack thereof was relevant to the existence of probable cause.

Similarly, Det. Crisitano's statement, in his August 22, 2012 affidavit, that he had immediately recognized Jaerue Williams on August 17, 2012 as the black male depicted on the surveillance video, is utterly irrelevant to the court's finding that there was probable cause to permit law enforcement to search the defendant's cellular telephone. As of the August 22, 2012, the defendant had already been arrested. His identity was not at issue. The black Kyocera cellular telephone, which law enforcement sought to search, had been recovered from the person of Jaerue Williams.

Consequently, as there is a paucity of evidence that any false statement was included in either affidavit prepared by Det. Cristiano, let alone that such a statement was intentionally included or inserted with wanton disregard for the truth, and as in any event the purported false statement is irrelevant to the evidence upon which probable cause was based, the defendant's application for a hearing is denied (see, *Franks v. Delaware*, 438 US 154, 155).

III. MOTION TO DISCLOSE INFORMATION REDACTED WITHIN THE PREVIOUSLY SEALED SEARCH WARRANTS

The defendant has asserted that the prior redactions, which this court approved, with respect to the affidavits submitted in support of the People's application for a search warrant for the person and the apartment of the defendant and for a forensic search of his car are "overbroad". All redactions previously made and approved by this court have been considered and are appropriate except to the extent otherwise indicated as follows.

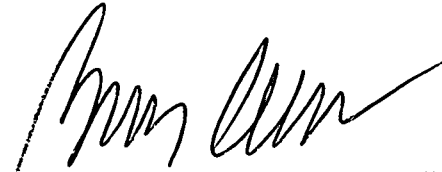
With respect to the Affidavit submitted by Det. James Carroll seeking authorization to search the defendant's person and apartment, this court finds that paragraphs nine (9), ten (10) and seventeen (17) are appropriately redacted since these paragraphs relate solely to observations made by a witness to the homicide for which the defendant stands charged under a separate indictment. With respect to the name redacted in paragraphs thirteen (13) and fifteen (15), the court now discloses the individual to be Charles Jin.

With respect to the affidavit of Aaron Connetta seeking authority to permit a

forensic search of the defendant's car, this court finds paragraphs twelve (12) and fourteen (14) are appropriately redacted as they too bear no relation to any of the charges in the within indictment (12-1101). They pertain solely to the unrelated homicide charges pending against the defendant.

The foregoing constitutes the opinion, decision and order of this Court. .

Dated: White Plains, New York
April 3, 2013



Honorable Barry E. Warhit
Westchester County Court

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