

People v Freeman

2015 NY Slip Op 32436(U)

November 16, 2015

County Court, Wayne County

Docket Number: 15-79

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
COUNTY COURT : COUNTY OF WAYNE

PEOPLE OF THE STATE OF NEW YORK,

-vs-

DECISION

WILLIE J. FREEMAN,

Ind. No. 15-79

Defendant

1) The Defendant Willie J. Freeman is charged by Indictment #15-79 with the following crimes:

- Count One: Robbery in the First Degree in violation of §160.15(3) (Kwik Fill);
- Count Two: Robbery in the Second Degree in violation of §160.10(2)(a) (Kwik Fill);
- Count Three: Robbery in the Second Degree in violation of §160.10(2)(a) (Kwik Fill);
- Count Four: Assault in the Second Degree in violation of §120.05(2) (Kwik Fill);
- Count Five: Assault in the Second Degree in violation of §120.05(2) (Kwik Fill);
- Count Six: Assault in the Second Degree in violation of §120.05(6) (Kwik Fill);
- Count Seven: Assault in the Second Degree in violation of §120.05(6) (Kwik Fill);
- Count Eight: Burglary in the Third Degree in violation of §140.20 (Spanky's);
- Count Nine: Petit Larceny in violation of §155.25 (Spanky's);
- County Ten: Burglary in the Third Degree in violation of §140.20 (Burnham's);
- County Eleven: Petit Larceny in violation of §155.25 (Burnham's)

2) On or about August 19, 2015, the Defendant allegedly entered Spanky's Restaurant in Lyons, New York unlawfully and stole U.S. currency.

3) On or about August 19, 2015, the Defendant allegedly entered Burnham's Restaurant in Lyons, New York unlawfully and stole U.S. currency.

4) On or about August 25, 2015, the Defendant allegedly forcibly stole property from Kwik Fill in Lyons, New York. At the time of the commission of said robbery, the Defendant allegedly assaulted Susan Pascarella and Reva Schwab, both non-participants, thereby causing physical injury to each of them. It is also alleged that the Defendant used a dangerous instrument, to wit, brass knuckles, during the commission of said felony, and that he caused physical injury to Susan Pascarella and Reva Schwab by the use of said dangerous instrument.

FINDINGS OF FACT

Testimony was elicited from a number of witnesses at a Huntley hearing which was held on October 23, 2015 to determine the admissibility at trial of statements allegedly made to police officers by the Defendant. The People also introduced into evidence two DVD discs. Exhibit 3 is a video of an interview of the Defendant conducted by Investigator Tammy Ryndock of the Wayne County Sheriff's Office. Exhibit 4 is a video of an interview of the Defendant conducted by Trooper Chris Braun of the New York State Police, at which Deputy Zachary Aunkst of the Wayne County Sheriff's Office was present in part. At his request, the Defendant proceeded pro se at the hearing, with court-appointed stand-by counsel, Douglas M. Jablonski, Esq., also present.

The testimony presented at the hearing included the following:

A) Chief Deputy Robert Hetzke of the Wayne County Sheriff's Office testified that, upon hearing a radio communication from a fellow officer regarding visual contact with the Defendant in the vicinity of Queen

Street and Butternut Street in Lyons, New York, he proceeded to drive to that location. Upon observing the Defendant attempting to climb underneath a porch at one of the residences in the area, Chief Hetzke approached the Defendant and placed him under arrest, ordering him to his knees at gunpoint. He then turned the Defendant over to the custody of two other officers. He did not question the Defendant.

Chief Hetzke testified that he recognized the Defendant from prior contact, and from an investigative briefing held earlier that day in connection with the Kwik Fill robbery. During the briefing, Chief Hetzke was shown a photograph, which was obtained from a video of the robbery filmed by a security camera at the station, and the witness was able to identify the individual in the photograph as the Defendant.

B) Deputy Phillip Dalton of the Wayne County Sheriff's Office testified that he arrived at the scene while Chief Hetzke held the Defendant at gunpoint. The Defendant was then hand-cuffed, and was placed in the custody of Parole Officer Jack Caster, who had previously been assigned to supervise the Defendant. Subsequently, custody of the Defendant was transferred to Deputy Dalton and a second deputy, who transported the Defendant to the Sheriff's Office. The officers stayed in an interrogation room with the Defendant until two Sheriff Investigators arrived. The deputies did not question the Defendant, and they were not present in the room during the subsequent interview.

C) Investigator Tammy Ryndock of the Wayne County Sheriff's Office testified that she was involved in the investigation of the burglary which occurred at Spanky's on August 19, 2015. As part of that investigation, she reviewed a video of the crime, which was recorded by a surveillance camera at the restaurant. The witness testified that the suspect who appears on the video was identified by Parole Officer Jack Caster as the Defendant. The Investigator also reviewed the surveillance tape of the Kwik Fill robbery and positively identified the Defendant as the perpetrator, whom she has personally known for a number of years.

Investigator Ryndock, together with Investigator Kevin Kuntz of the

Wayne County Sheriff's Office, interviewed the Defendant for approximately two hours in the Interrogation Room. Investigator Ryndock advised the Defendant as to his Miranda rights prior to questioning. The Defendant indicated verbally that he understood those rights, as further evidenced by his initialing a waiver. The entire interview was recorded, on the disc received by the Court as Exhibit 3. While initially denying involvement in any criminal behavior, the Defendant subsequently admitted having committed the burglaries and the robbery in question. In addition to his oral statements, the Defendant also signed a written statement, prepared by Investigator Ryndock.

D) Deputy Zachary Aunkst of the Wayne County Sheriff's Office testified that, subsequent to the completion of the Investigators' interview, he came into contact with the Defendant in the Interrogation Room, and he remained there intermittently for approximately one and one half hours until such time as the Defendant was to be transported for arraignment by a local Justice. Deputy Aunkst testified that the Defendant made a statement to him that he committed the Kwik Fill robbery.

The video recording received as Exhibit 4 indicates that Deputy Aunkst was present in the interview room during a portion of the time when the Defendant was questioned by State Trooper Chris Braun on an unrelated matter. Trooper Braun read the Defendant Miranda warnings, and the Defendant indicated that he understood his rights and that he was willing to talk. The Defendant never requested an attorney at any time during the interview. The Defendant volunteered information regarding alleged narcotics dealers and gun possession in an attempt to obtain a promise from the officers regarding a reduced sentence or low bail. However, both officers repeatedly advised the Defendant that they could make no promises to the Defendant.

E) The Defendant Willie Freeman, after consultation with stand-by counsel, also testified at the hearing. The Defendant denied committing any of the crimes with which he was charged. He also argued at length that he relied on promises allegedly made to him by Investigator Ryndock regarding favorable treatment, and that he therefore falsely incriminated

himself as a result of those promises. He denied signing the statement prepared by the Investigator following the interview. (Exhibit 2).

CONCLUSIONS

The Court having considered the credible testimony of the witnesses as set forth in the above Findings, and having further reviewed the video recordings marked Exhibit "3" and "4" of the Defendant's interviews with police officers, I conclude as follows:

- 1) The actions of members of the Wayne County Sheriff's Office in arresting the Defendant and taking him into custody were supported by probable cause;
- 2) The arresting officers did not question the Defendant, nor did the Defendant volunteer any spontaneous statements during his arrest and transport to the Sheriff's Office.
- 3) The Defendant was advised of his Miranda rights by Investigator Ryndock prior to commencement of the first interview, and he indicated that he understood and waived his rights, both verbally and in writing. The Defendant made no request for an attorney.
- 4) The Defendant was interviewed for approximately two hours, during which time he made statements incriminating himself in both burglaries and in the Kwik Fill robbery. The Defendant also signed a statement prepared by the Investigator.
- 5) No physical force, duress or threats were used by any police officer in order to obtain the statements made by the Defendant. While the Defendant testified at the hearing that Investigator Ryndock made certain promises to the Defendant during the interview to elicit his statements, the video recording clearly shows that it was the Defendant himself who attempted to obtain assurances regarding leniency by offering to provide information regarding narcotic sales and that the Investigator's only promise was that she would accompany the Defendant to his arraignment,

and that she would advise the authorities if the Defendant co-operated during the investigation. She repeatedly told the Defendant that any offers regarding possible leniency must come from the People. This Court finds Investigator Ryndock's testimony to be credible.

6) This Court also concludes that any statements made by the Defendant during the period recorded on Exhibit 4 were not the product of any physical force, duress or threats. The Defendant was re-read his Miranda rights by Trooper Braun at the commencement of the second interview. As previously stated, the purpose of that interview was largely unrelated to the instant charges, although considerable time was spent in the Defendant's continuing attempts to "made a deal" with the officer to secure a promise of low bail. However, no promises were made to the Defendant other than general statements that the officer would convey information supplied by the Defendant to the People.

Therefore, it is the decision of this Court that any oral statements made by the Defendant during the interviews recorded on the video discs received as Exhibit 3 and Exhibit 4, together with any written statement signed by the Defendant, as well as any photographs or tests which were obtained during said interviews, were voluntary, were not the product of coercion, and shall be admissible at the time of trial.

Dated: November 16, 2015
Lyons, New York



Honorable Dennis M. Kehoe
County Court Judge