

**People v Barnett**

2016 NY Slip Op 32706(U)

January 19, 2016

County Court, Westchester County

Docket Number: 15-0552

Judge: Barbara G. Zambelli

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FILED  
AND ENTERED  
  
ON  
JANUARY 19 2016  
  
WESTCHESTER  
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No: 15-0552

- against -

ANTONIO BARNETT,

DECISION AFTER HEARING

FILED  
 Defendant JAN 19 2016  
 COUNTY CLERK  
 COUNTY OF WESTCHESTER

-----X  
ZAMBELLI, J.

The defendant has been indicted for the crimes of Murder in the Second Degree and Criminal Possession of a Weapon in the Third Degree allegedly committed on or about April 18, 2015, in the County of Westchester.

By decision and order dated September 15, 2015, this court granted defendant's motion solely to the extent of ordering Sandoval/Ventimiglia, Mapp, Huntley, Wade and Dunaway hearings.

The following witnesses gave testimony Yonkers Police Officers Jonathan Flood, Stuart Barksdale, Detectives Daniel Higgins and Sean Drain.

**FINDINGS OF FACT**

The credible testimony adduced at the hearing on this case established that on April 18, 2015 at approximately 6:25 a.m., a dispatch was sent by the Yonkers Police Department of a stabbing in progress at 8 Schroeder Street, Yonkers. This location is

known as the Schlobohm housing project. Police Officer Barksdale and Police Officer Brandy arrived at the scene of 8 Schroeder street, at the rear gate leading to Palisade Avenue and observed the victim, David Benitez being treated by ambulance personnel. Police Officer Barksdale met with the security guard (Monrose) who told him that he saw a male with a knife chasing another male down to the gate at the location of his security booth. When asked, he told the officer he could identify the perpetrator.

Police Officer Flood and Police Officer Camperlongo also responded to the dispatch and while enroute to the location heard another dispatch which was that the perpetrator was a black male of average height and weight wearing a black sweatshirt and gray sweatpants and was seen running toward School Street. The officers responded to the area and observed an individual walking towards the gas station on Elm Street and School Street wearing a black sweatshirt, gray sweat pants, average build and height. The gas station video played during the hearing shows the defendant being followed by another individual, later identified as EC<sup>1</sup>, who approached Police Officer Flood's marked vehicle. Cruz pointed to the defendant and told the officer that the individual he was pointing to had just stabbed someone. The officers pulled into the gas station, exited the vehicle and approached the defendant who was now standing at the walk up window in the gas station. As they approached, the officer observed that defendant fit the description and also observed blood on defendant's clothing and hand. At 6:29 a.m., the officers radioed they had a possible suspect. Defendant was told by Police Officer Camperlongo to put his hands on the wall. Before complying, and before anything was said to him, defendant told

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<sup>1</sup> The witness is referred to as "EC" in order to protect his/her identity.

them in sum and substance that he knew about a stabbing, they have the wrong guy, the guy was stabbed up pretty bad. Defendant placed his hands on the wall and was patted down. Police Officer Flood went over to Cruz for further information. Cruz told him that he followed the man down from Schroeder Street after he (defendant) stabbed the guy. Police Officers Woska and Luquis arrived at the gas station. Police Officer Luquis speaks Spanish which would help in interviewing Cruz. Defendant was cuffed, patted down again and placed in a police vehicle. Monroe, the security guard in the booth at the crime scene, was transported by Police Officer Barksdale in his marked patrol vehicle to defendant's location. Nothing was said to Mr. Monroe while he was in the vehicle. Upon Police Officer Barksdale's arrival, defendant was removed from the police vehicle by two uniformed officers in order to facilitate a view of him by Monroe who was seated in Police Officer Barksdale's vehicle approximately 25 feet away from defendant's location. Two uniformed officers were by defendant. Upon observing defendant, Monroe stated "that's him." Nothing was said to Monroe. The identification was made at 6:38 a.m. He was returned to 8 Schroeder Street by Police Officer Barksdale. The location of the gas station is approximately 300 yards from the scene of the crime.

Defendant was taken to the detective division holding cell and thereafter the interview room with Detectives Higgins and Drain. The interview was audio and visually recorded the moment defendant entered the interview room. Defendant was not told that the interview was being recorded. The camera was not turned off at any time during the interview the video was played during the hearing. At approximately 10:08 a.m. Defendant was read his Miranda warnings, acknowledged he understood his rights and would speak

to them. The questioning continued until approximately 2:40 p.m. The focus of the questioning was to elicit from defendant the motive for the commission of the crime since the detectives already knew from videos and eyewitness's defendant was the perpetrator. Defendant orally and in writing consented to a buccal swab for DNA testing. The written consent form was placed in evidence. Towards the end of the questioning, the detective at times raised his voice when defendant was denying he was not the person depicted in the crime scene photos. Defendant was told his fiancé was in the detective division. He told Detective Drain he wanted to speak with her and would not say anything to them unless they let him speak to her. Detective Drain received permission to let defendant speak to his fiancé. Detective Drain told him that the victim had died and he would be "looking at life or not." Detective Drain explained this was a tactic to try to get defendant to show remorse, to confess. Detective Higgins explained that defendant had not been told before that Benitez had died but was seriously injured so that defendant would think that Benitez would be eventually interviewed to identify who had stabbed him. Defendant's meeting with his fiancé was in the same room and was audio and video recorded. His fiancé, Shamika Pettiford, was shown pictures of the defendant holding the knife before entering the interview room. She was also told that they would be recorded once she entered the interview room. There was an emotional exchange between them. Defendant blamed himself for their situation. Ms Pettiford left the room and the detectives returned. Defendant explained to the detectives the circumstances surrounding the stabbing. At approximately 1:40 p.m. he gave a written statement. Defendant was cuffed at approximately 2:40 p.m. and taken to booking for processing. According to Detective

Higgins, in his many years of experience, the Yonkers City Court is no longer in session at that time on a Saturday. Defendant was arraigned the following Monday, April 20, 2015 when court was back in session.

### **CONCLUSIONS OF LAW**

#### **Identifications**

The identification by EC was not police sponsored or police arranged. EC followed defendant from the scene of the crime and went directly to Police Officer Flood to point out defendant in the gas station as the individual who had stabbed someone. Accordingly, the motion to suppress his in court identification is denied.

With regard to the show up identification of the defendant by the security guard, it is established that "...prompt showup identifications by witnesses following a defendant's arrest at or near the crime scene have been generally allowed..." (People v. Duuvon, 77 N.Y.2d 541, 544) Show ups have been further upheld "... as part of an "unbroken chain of events" or ongoing investigation (see, People v. Duuvon, 77 N.Y.2d 541, 569 N.Y.S.2d 346, 571 N.E.2d 654 [1991] )." (People v. Howard, 22 N.Y.3d 388, 402; See also, People v. Johnson, 81 N.Y.2d 828, 831)

In the instant case, the security guard, an eyewitness to the crime, identified defendant as the perpetrator of the stabbing within minutes of the commission of the crime at a location 300 yards from the crime scene. Accordingly, the motion to suppress an in court identification by the security guard is denied.

The stop of the defendant and pat down at the location of the walk up window by the officers was supported by reasonable suspicion that defendant had committed a felony

and may be armed (See, People v DeBour, 40 N.Y.2d 210,223; CPL 140.50, subd. 1; see Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889) based on the facts that: defendant fit the description of the perpetrator; he had blood on his clothing and hands; he was walking in the direction described in the dispatch approximately 300 yards from the crime scene; EC had followed the defendant from the commission of the crime and pointed defendant out to the officers as the guy who had stabbed someone.

The security guard's identification of the defendant as the person he observed stab the victim established probable cause for the arrest of the defendant. Having been lawfully arrested, his clothing was lawfully taken in evidence incident to his arrest (See, People v. Payne, 233 A.D.2d 787).

#### **Statements by Defendant in the gas station**

After the officers' instruction to defendant to place his hands on the wall and before defendant placed his hands on the wall, defendant made the statement set forth supra. The defendant had not been subjected to custodial interrogation. No other statement had been made to the defendant. Defendant spontaneously volunteered this statement. (See, People v. Maerling, 46 N.Y.2d 289, 302–303). His motion to suppress is denied.

#### **Statements in the Detective Division Interview Room**

"The voluntariness of a confession is to be determined by examining the totality of the circumstances surrounding the confession (see, People v. Sohn, 148 A.D.2d 553, 556, 539 N.Y.S.2d 29; People v. Woods, 141 A.D.2d 588, 529 N.Y.S.2d 194)." (People v.

Coggins, 234 A.D.2d 469, 470)

“To determine voluntariness, courts review all of the surrounding circumstances to see whether the defendant's will has been overborne (People v. Anderson, 42 N.Y.2d at 38, 396 N.Y.S.2d 625, 364 N.E.2d 1318; Arizona v. Fulminante, 499 U.S. 279, 285–286, 111 S.Ct. 1246, 113 L.Ed.2d 302 [1991] ). Of course, “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment” (Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 [1986] ).” (People v. Mateo, 2 N.Y.3d 383, 811 N.E.2d 1053 (2004)). “It is the People's burden to prove beyond a reasonable doubt that statements of a defendant they intend to rely upon at trial are voluntary” (People v. Thomas, 22 N.Y.3d 629, 641, 985 N.Y.S.2d 193, 8 N.E.3d 308; see, People v. Guilford, 21 N.Y.3d 205, 208, 969 N.Y.S.2d 430, 991 N.E.2d 204). “To do that, they must show that the statements were not products of coercion, either physical or psychological” (People v. Thomas, 22 N.Y.3d at 641, 985 N.Y.S.2d 193, 8 N.E.3d 308).

The video establishes defendant was advised of and waived his Miranda rights (see Miranda v. Arizona, 384 U.S. 436). During the ensuing approximate 3-4 hours, there were several breaks. He was offered food, something to drink, water, use of the bathroom, and cigarettes. (See, People v. Bryan, 43 A.D.3d 447, 448; People v. Hasty, 25 A.D.3d 740, 741). There was no coercive tactic either physical or psychological which resulted in overbearing defendant's will. Indeed, defendant continuously maintained he was not the person in the pictures; he was not the person who stabbed Benitez. He initiated his own terms under which he would confess. Indeed, he told them he would confess only if they

let him see his fiancé. After an emotional scene with his fiancé in the interview room he admitted both orally and in writing that he had stabbed Benitez and explained the reasons he had stabbed him.

Accordingly, the People have proven beyond a reasonable doubt defendant's statement was voluntary.

With regard to defendant's contention that arraignment was purposely delayed to deprive him of his right to counsel, "... [the Court of Appeals has] never held that a deliberate delay of arraignment for the purpose of obtaining a confession triggers the State constitutional right to counsel" (People v. Ramos, 99 N.Y.2d 27, 34, 750 N.Y.S.2d 821, 780 N.E.2d 506). "Rather, such a delay bears on the voluntariness of the confession, and is a factor to be considered in that regard" (id.; see, People v. Osorio, 49 A.D.3d 562, 855 N.Y.S.2d 163; see also CPL 140.20[1]; cf. People v. Holland, 48 N.Y.2d 861, 862–863, 424 N.Y.S.2d 351, 400 N.E.2d 293). "[E]xcept in cases of involuntariness, a delay in arraignment, even if prompted by a desire for further police questioning, does not warrant suppression" (People v. Ramos, 99 N.Y.2d at 35, 750 N.Y.S.2d 821, 780 N.E.2d 506). 861, 862–863, 424 N.Y.S.2d 351, 400 N.E.2d 293)."(People v. Dunlap, 51 A.D. 3d 943; leave to app den 10 N.Y.3d 958; See also, People v. DeCampoamor, 91 A.D.3d 669)

In the instant case, the crime was committed at approximately 6:30 a.m. on a Saturday morning. The police investigation immediately ensued throughout the morning. The city court was not in session at the point defendant was booked at approximately 2:40 p.m. Defendant gave no further statements after he was booked and processed on Saturday. The next Court session was on a Monday. The time and day of the crime

resulted in the delay in arraignment and did not impair the voluntariness of defendant's statement, especially since he was not questioned again after being booked and processed on Saturday afternoon.

### **Consent to Buccal Swab**

Consent, "must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances." (See, v. People Gonzalez, 39 N.Y.2d 122, 124).

The video establishes defendant's oral and written consent was a free and unconstrained choice which was not the result of official coercion. Accordingly, the swab and the test results flowing therefrom are admissible in evidence.

Accordingly, for the foregoing reasons, the motion to suppress is in all respects denied.

The foregoing constitutes the decision and order of the court.

Dated: White Plains, New York  
January 19, 2016

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE