

People v Jiggetts

2016 NY Slip Op 32983(U)

June 1, 2016

Supreme Court, New York County

Docket Number: 2731/15

Judge: A. Kirke Bartley

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SEP 19 2016

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 94

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION and ORDER
Ind. No. 2731/15

OSCAR JIGGETTS,

Defendant.

-----X
For the People: ADA Charles Kee
For the defendant: Karen Funk, Esq. and Basima Hafiz, Esq.

JUSTICE A. KIRKE BARTLEY

The defendant was charged with Robbery in the Second Degree and related charges. He was sent to Part 94 for hearing a trial. A *Huntley/Wade/Dunaway/Mapp/Payton* hearing was conducted on April 13, 2016. At the hearing, Detective David Colletti testified credibly for the People. The defendant presented no witnesses. Defendant's motion to suppress is denied based upon the following Findings of Fact and Conclusions of Law.

Findings of Fact

In the late morning of July 15, 2015, Detective Colletti responded to a radio call of a robbery in progress near 102nd Street and West Drive inside Central park. When he and Sergeant Seiling responded to that location, a number of patrol officers had already arrived. He was told that the patrol officers had canvassed the area for the perpetrator, to no avail. Detective Colletti spoke with the complainant, a woman named Marianna Milkis-Edwards. He observed her to have what looked like a black eye, scrapes on her legs and a swollen hand. She told him that she had been sitting on a bench by the lake (called the Pool) in the park, and then went to the bathroom on the great hill. When she was walking on a path back to the Pool, a bald black male with dark skin, around 6 feet tall, late 30 to 40 years old, wearing a black t-shirt and jeans walking towards her. She also said the man had a red rag or bandanna on his wrist or in his hand. As he passed her, he punched her in the face several

times, knocking her to the ground and said "give me your pocketbook." He hit her a few more times on the ground, she gave him the bag, he took her wallet out from the bag and threw the bag at her on the ground. He then walked away northbound. She told the detective that her wallet contained a permit, two credit cards, a green card and a social security card. Detective Colletti brought the complainant back to the precinct where she viewed a number of photographs on the police Photo Manager System, but did not identify anyone.

Detective Colletti contacted the credit card companies, and was informed that one of the cards was used in the 127th Street and St. Nicholas Avenue subway station. On July 17th, the detective obtained video recording from inside that train station on July 15, 2015 when the complainant's credit card was used in three transactions at an MTA machine. The detective viewed the video and was able to observe what appeared to be a male from the chest down (his face was not visible), wearing jeans, a light shirt and carrying a red cloth using the machine at that time and then exit towards 127th Street. The detective obtained further video from that date and time from a camera located on the street outside of the train station on 127th Street between St. Nicholas Terrace and 8th Avenue. On that video the detective observed a bald black male wearing jeans, a white or light gray shirt, carrying a red cloth walking eastbound.

Over the next few days, Detective Colletti continued to look for more video evidence along the route that the man with the red cloth was walking. While there were cameras outside of 2 St. Nicholas Terrace, he was informed that they did not work, but when they told the man they spoke to about the video cameras that they were investigating a robbery, the man told them that he had found a wallet in the yard in back of the building. The man took the detective to the back of the building and showed him the gated courtyard where he found the wallet. Detective Colletti noted that next door to the building was another building with gates around it, with cameras on a high fence. He went to that the building next door, which is a place that houses recently released prisoners called Narco Freedom. The detective spoke to staff inside Narco Freedom, who told him he needed a subpoena for the video. The detective thereafter obtained a video from 10 St. Nicholas Terrace (which was not the Narco

Freedom building) and observed on the videotape what appeared to be that same male from the subway (he was wearing the same clothing and carrying the red cloth) walking northbound on St. Nicholas Terrace, crossing to the west side of the street towards 128th Street. The detective observed that there is a deli at 25 St. Nicholas Terrace, so he went in and viewed videotape from inside the deli. In the deli video, the detective saw the same man from the subway carrying the red cloth walking into the deli. He downloaded the video from the deli.

The detective testified that he retrieved video from the deli on July 19th, and then returned on the 20th to see if there was more footage. One deli worker told the detective that the man on the video that they were looking comes into the deli every morning to get an egg sandwich and was there earlier that morning. Detective Colletti then viewed the video from earlier that morning and observed what he saw to be the same man from the subway, dressed in the same clothing from July 15th, make a purchase at the back counter and then go to the cashier and swipe an EBT card. The detective obtained that receipt and reached out to HRA, who identified the owner of the card as Oscar Jiggetts. Detective Colletti dropped an I-card for Oscar Jiggetts and notified the warrant division.

On July 21, 2015, Detective Colletti was notified that Oscar Jiggetts had been arrested by the warrant division and was taken to the Central park Precinct. The warrant officer who made the arrest recovered a cell phone from the defendant at the time of his arrest, and provided that to the detective, who vouchered it. Detective Colletti met with the defendant in the interview room in the precinct, and read him *Miranda* warnings. The defendant orally answered yes and signed yes and wrote his initials next to each question, and signed the form, and agreed to speak with the detective. He gave an oral statement.

Later that day, Detective Colletti conducted a lineup. Four fillers who generally matched the defendant's description were brought to the precinct from Randall's Island. The defendant selected #3 and all five of the men in the lineup remained seated. All of the line-up participants were in their 50s. The complainant was asked to come to the precinct, and steps were taken to ensure she could not see the defendant or any of the line up fillers prior to

viewing the lineup. The complainant was read instructions from a "Pre-Lineup Instruction Sheet", which she thereafter initialed and signed, which included that the perpetrator may or may not be present and that there was a one way mirror. The complainant viewed the lineup and identified #3 as the man who robbed her.

At some point after the lineup, the defendant was taken to 100 Centre Street for the purpose of being interviewed by the Assistant District Attorney. A videotape was admitted into evidence which depicted the defendant first receiving *Miranda* warnings, agreeing to speak with those present, and providing a videotaped statement. During that statement, the defendant was asked about the cell phone that was recovered from him, and agreed to permit law enforcement to examine his phone.

Conclusions of Law

With regard to the *Mapp/Dunaway/Payton* portion of the hearing, Detective Colletti had probable cause to issue the I-card which led to the defendant's arrest by the warrant division. The evidence established that Detective Colletti's investigation, which included his procurement of video surveillance footage from various sources, led to his identification of the defendant as the man who, at the very least, attempted to use the complainant's credit cards on the day of the robbery. Indeed, the detective located video recordings of the man who attempted to use the cards at the 127th Street station, and then followed video surveillance evidence along St. Nicholas Terrace, in the direction that man walked after his failed attempt to use her credit cards. That investigation led the detective to the location from which he recovered the discarded wallet, which led to more video surveillance footage of the same man. That footage led the detective to a deli located on St. Nicholas Terrace, wherein interviews with an employee and further videotape surveillance footage from inside the deli led to the discovery that the same man (wearing the same clothing) made a purchase with his public benefits card. This information was used by Detective Colletti to reach out to HRA, who informed him that the defendant owned the card that was used for that purchase. Once the defendant was identified by name, Detective Colletti had probable cause to issue the I-card for the defendant, which authorized the warrant division to arrest him. With regard to

the *Payton* issue, the entirety of the discussion and argument involved the recovery of the defendant's cell phone, which was recovered from the defendant by a member of the warrant division pursuant to a search incident to his lawful arrest and then given to Detective Colletti at the precinct. While the evidence established that the defendant was picked up at his residence and taken to the precinct, there was no evidence that any officer crossed the threshold into the defendant's apartment at the time he was taken to the precinct.

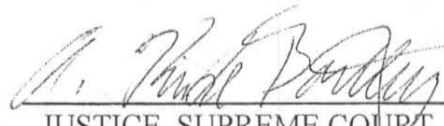
With regard to the *Wade* portion of the hearing, the complainant's identification of the defendant was not tainted by undue suggestion. While "the participants of a line-up should have the same general physical characteristics [...], there is no requirement that a defendant in a line-up be surrounded by individuals nearly identical in appearance" (*People v. Robert*, 184 AD2d 597, 598). Here, the record establishes that the defendant's appearance did not differ greatly from the fillers, and any discrepancy between the complainant's initial description regarding age of the perpetrator and the defendant's age was minimized by ensuring that all of the fillers were, like the defendant, in their 50s. Nor is there any evidence that anything was said to the complaining witness which would have rendered the lineup unduly suggestive.

With regard to the *Huntley* portion of the hearing, as the People indicated that they were not intending to use the defendant's statements on their direct case, the parties agreed that the only issue to be determined at the hearing was voluntariness. Indeed, the evidence established that the statements were voluntary, in that no threats nor any type of coercion was employed by any member of law enforcement, and all of the statements were made after defendant was informed of his *Miranda* rights and knowingly and voluntarily waived them.

In conclusion, the motion to suppress is denied.

The foregoing constitutes the opinion, decision and order of the court.

DATED: June 1, 2016
New York, NY


JUSTICE, SUPREME COURT