

People v Scott

2016 NY Slip Op 33226(U)

July 6, 2016

County Court, Westchester County

Docket Number: Indictment No. 15-0550

Judge: Barbara G. Zambelli

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FILED
AND ENTERED
ON _____, 2016
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

CARLA SCOTT,

Defendant.

Indictment No: 15-0550

DECISION AFTER HEARING

-----X
ZAMBELLI, J.

The defendant has been indicted for the crimes of Manslaughter in the First Degree, Manslaughter in the Second Degree, Criminal Possession of a Weapon in the Third Degree and Leaving the Scene of an Incident Without Reporting in violation of Section 600 (02) of the Vehicle and Traffic Law of the State of New York, allegedly committed on or about April 18, 2015, in the County of Westchester.

By decision and order dated August 31, 2015, this Court granted defendant's motion to suppress solely to the extent of ordering a Wade and Huntley hearing. The hearings were held on July 6, 2016 wherein Detectives Stephen Sokolik, Michael Farina and Stephen Donohue of the Yonkers Police Department gave testimony.

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COUNTY OF WESTCHESTER

FINDINGS OF FACT

The credible evidence adduced at the hearing on this case established that on April 18, 2015, at approximately 5:20 p.m., in the vicinity of 178-179 Warburton Avenue, Yonkers, Glynis Pinto was killed. Eyewitnesses reported that defendant was the driver of a black Mercedes four door sedan that drove over the victim. One of the witnesses, Sabrina Agosto, told Detective Sokolik that the victim was her cousin. She was brought into the detective division and asked if she could identify the driver of the vehicle. Before showing her a photo array that had been prepared by Detective Kerner, she was told to concentrate on facial features. He told her she may or may not know anyone in the array. A mole had been added over the eye of each face in the array in order to avoid any issues of suggestibility. At approximately 7:55 p.m., she was shown Exhibit 8 (e) (1) in evidence. She immediately pointed to defendant's photo. Asked how she knew that person, she said that was the person who ran over her cousin with the car.

On the same day at approximately 8:00 p.m., Detective Farina met with Ashley Mays, another eyewitness to the incident. She responded positively when asked if she could identify the driver of the vehicle. Prior to being shown a photo array, Exhibit 8 (b) (3), she was told to look at the eyes, nose, and mouth since these are features that cannot change unlike hair styles. She was told she may or may not recognize anyone in the array. If she does recognize someone, she should tell him how she recognizes the person. After viewing the array for approximately 30 seconds to one minute, she identified defendant's picture as the person who ran over her friend.

Between April 22 and April 23, 2015, Detective Donohue and his partner transported the defendant from the interview room in the detective division to central booking. Defendant was under arrest and handcuffed. She was directed to go to the rear of the elevator and to face the corner. She refused. She was directed a second time to go to the rear and face the corner. She again refused. The detective grabbed her arm and turned her around to face the corner. She told him to "get the f__ of me". While walking off the elevator, the detective credibly explained how it appeared defendant was about to spit on them. He pulled on her chain which caused her to bend over so that she could not spit on them. She stated, "This is the type of case bail is made for, once I get it, I'm out". The detective said nothing in response.

CONCLUSIONS OF LAW

It is settled that there is no requirement that all participants in a photo array be identical in appearance; rather, all that is required is that all participants resemble each other sufficiently so as not to create a substantial likelihood that the defendant will be singled out for identification (see, People v. Velez, 222 A.D.2d 625, lv denied 88 N.Y.2d 887; Matter of Raymond, 178 A.D.2d 288).

The photo arrays shown to Agosto and Mays did not single out the defendant. Moreover, the police did not engage in any improper conduct or suggest in any manner that either witness select the photo of the defendant (see e.g., People v. Edwards, 199 A.D.2d 574, 575, lv denied 83 N.Y.2d 804).

A spontaneous, volunteered statement is one made without any external prompting (see, People v. Lynes, 49 N.Y.2d 286) as opposed to one that is elicited directly or

indirectly (see, People v. Lucas, 53 N.Y.2d 678, People v. Maerling, 46 N.Y.2d 289, 301-303, 413 N.Y.S.2d 316, 385 N.E.2d 1245; People v. Lanahan, 55 N.Y.2d 711, 447 N.Y.S.2d 139, 431 N.E.2d 624) or otherwise induced by police action (see, People v. Bodner, 75 A.D.2d 440). There is no evidence that detectives prompted or induced defendant to make the statements in the elevator while enroute to central booking. Hence, her statements were spontaneous.

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
July 6, 2016



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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