

People v Bristow

2016 NY Slip Op 33229(U)

August 1, 2016

County Court, Westchester County

Docket Number: Ind. No. 15-0615-01

Judge: Helen M. Blackwood

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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PEOPLE OF THE STATE OF NEW YORK

-against-

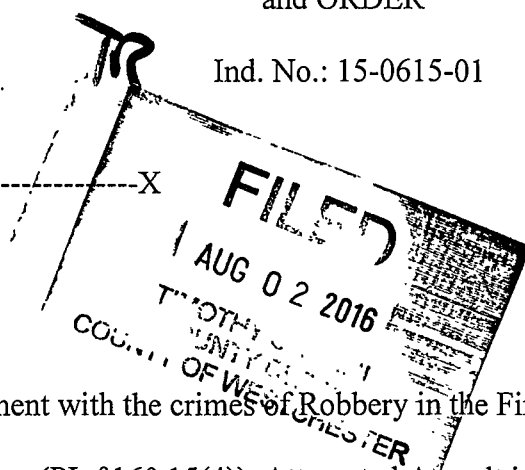
DECISION
and ORDER

JUSTIN BRISTOW,

Defendant.

Ind. No.: 15-0615-01

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Blackwood, J.



This defendant has been charged by indictment with the crimes of Robbery in the First Degree (PL §160.15(2)), Robbery in the First Degree (PL §160.15(4)), Attempted Assault in the First Degree (PL §110/120.10(1)), Assault in the Second Degree (PL §120.05(6)), Assault in the Second Degree (PL §120.05(2)), Criminal Possession of a Weapon in the Second Degree (PL §265.03(1)(b)), Criminal Possession of a Weapon in the Second Degree (PL §265.03(3)), Criminal Possession of a Weapon in the Third Degree (PL §265.02(1)), and Menacing in the Second Degree (PL §120.14(1)) (two counts). Attached to the indictment were four notices pursuant to CPL §710.30, each indicating that at trial, the People expect to introduce testimony consisting of an in-court identification of the defendant by four separate witnesses that had previously identified the defendant from a photograph at the Yonkers Police Department Headquarters on or about February 5, 2015. On June 6, 2016, a Wade hearing was ordered to determine whether the identification procedures were so improperly suggestive as to render any in-court identifications inadmissible (Neary, J.). On July 28, 2016, such hearing was held in this Court.

According to the testimony adduced at the hearing, at approximately midnight on February 5, 2015, Detectives Dale Hughes and Nicholas Servidio of the Yonkers Police Department responded to One Whalen Place, Yonkers, New York on a report of a shooting. One Whalen Place was described as a multi-family dwelling with several apartments. When they arrived, patrol officers that were already on the scene briefed the detectives as to what they knew. The detectives observed blood in the apartment and three civilian witnesses: Robin Crump, the resident of the apartment, Eugene Sturdivant, and Vaughn Williams.¹ The victim of the shooting, David Green, had already been removed from the scene and transported to Westchester Medical Center.

Shortly after his arrival on scene, Detective Hughes spoke briefly to Ms. Crump. During that conversation, Ms. Crump recounted the events that occurred in her apartment earlier in the evening. Additionally, she advised the detective that the person responsible for the incidents that occurred was a male that she had known for approximately one to one and a half years. Although she did not know his legal name, she referred to him as “Slim” and described him to have dread locks and a thin build, “like a girl.” Finally, she told the detective that “Slim” had been to her apartment before and in fact, was arrested at One Whalen Place some time around Labor Day of 2015. The detectives spoke to the remaining two witnesses briefly and both gave a similar description of the perpetrator, which was broadcast over the air by the police. Eventually, all three witnesses were transported to the Yonkers Police Detective Division by patrol officers.

¹ Vaughn Williams has since died in a manner unrelated to this case. As such, prior to the Wade hearing, the People withdrew the identification notice relating to his pre-trial identification of the defendant.

While at the detective division, described as a large room filled with eight or nine desks and a table in the middle, Detective Hughes ran what was described as a “premise check” in order to determine who was arrested at One Whalen Place on or around Labor Day of 2015. As a result of the search, he learned that the defendant, Justin Bristow, had been arrested at that location on that approximate date. Using that information, the detective obtained a photograph of the defendant and his pedigree information, from the police department’s RICCI system, a database containing information about prior arrests throughout Westchester County.

At approximately 2:09 am, Detective Hughes began an interview with Ms. Crump and took and typed a statement from her that she signed. In her statement, Ms. Crump described the incidents that took place in her apartment earlier in the evening and gave the same description of the defendant. Ms. Crump repeated to the detective that the defendant, known to her as “Slim,” had come to her apartment many times over the last year and a half to “hang out.” When Detective Hughes was almost through taking her statement, he showed her the photograph of the defendant. When he showed her the photograph, the detective instructed to Ms. Crump look at it, concentrate on the face and try to ignore things that can change, such as hair and clothes. Ms. Crump did so and advised Detective Hughes that the man in the picture was the man that had been in her apartment earlier that evening. Additionally, she wrote on the photograph, “[t]his is the young man that I know as Slim and the who [sic] shot David Green. I meet [sic] him threw [sic] a neighbor who lives on Vineyard. He also robbed me and Vaughn’s cells [sic] phones and my pouch with money in it.” That photograph was admitted into evidence by the People. At approximately 3:11 am, Ms. Crump completed her statement and was advised by the detective that she could go home.

At some point after Ms. Crump identified the defendant as the man that had been in her apartment earlier that evening, Det. Servidio created a photographic array using the same photograph of the defendant. The detective generated the array by using the RICCI system to find photographs of other men with physical characteristics similar to the defendant. Detective Servidio generated two different arrays with the same six photographs. The photograph of the defendant was in a different place in each array, chosen randomly by the RICCI system.

Next, at approximately 3:25 am, Detective Hughes began his interview of Mr. Sturdivant, who had been waiting in the lobby just outside of the detective division and separated by a half door that was closed on the bottom. As he had done with Ms. Crump, Detective Hughes took a typed statement from Mr. Sturdivant, which Mr. Sturdivant then signed. While giving this statement, Mr. Sturdivant indicated that he knew the defendant from having met him at Ms. Crump's apartment in the past and knew him as "Dread." Towards the conclusion of the interview, Det. Hughes showed one of the photographic arrays created by Detective Servidio to Mr. Sturdivant. He placed the array in front of Mr. Sturdivant, and without touching the array, advised Mr. Sturdivant that the man that was in Ms. Crump's apartment earlier in the evening may or no not be in the array. He told Mr. Sturdivant to look carefully at the men in the photographs, to focus on their faces and not on things that could be changed, such as hair and clothes, and that he had to be 100% sure he was right before he identified anyone. Mr. Sturdivant circled the photograph of the defendant and stated that that was "Dread." He also signed and dated the array. This photographic array was admitted into evidence by the People. Mr. Sturdivant completed his statement at approximately 3:46 am and left the detective division.

Finally, at 4:10 am, Detective Hughes interviewed David Green at the detective division, after Mr. Green had been released from Westchester Medical Center. Det. Hughes took a

statement from Mr. Green just as he had done with the previous two witnesses. Mr. Green advised Detective Hughes that he knew the man that had shot him from seeing him around and that he knew him as "Slim." Detective Hughes showed Mr. Green the other photographic array created by Detective Servidio in the same way he had shown the earlier array to Mr. Sturdivant and gave him the same instructions. Mr. Green circled the photograph of the defendant and stated that that was the man that shot him. Additionally, he signed and dated the array. This photographic array was admitted into evidence by the People. Mr. Green completed his statement at 4:50 am and left the detective division.

The defendant argues that all three identification procedures were unduly suggestive and therefore, all three in-court identifications should be suppressed. First, with respect to the single photograph shown to Ms. Crump, the defendant contends that the showing of a single photograph is inherently suggestive and that the People failed to establish that Ms. Crump and the defendant were known to each other prior to the identification procedure. Specifically, the defendant argues that Det. Hughes' hearsay testimony regarding Ms. Crump's relationship with the defendant fails to shed any light on the quality of the interactions they have had in the past and therefore, the court must find the procedure to be suggestive.

With respect to the photographic arrays, the defendant argues that they are unduly suggestive because the photograph of the defendant is the only one that takes up the entire frame of the picture and is the only photograph with any "flash of color." He argues that those two features lend themselves to suggestibility. Moreover, the defendant argues that the procedure the detectives used to create the array and conduct the identification procedures were flawed and that their "bare minimum instructions" and "ad hoc training" render the identifications unreliable.

Conversely, the People argue that the identification by Ms. Crump was “confirmatory” based upon her prior relationship with the defendant and therefore, “impervious to suggestion.” With respect to the photographic arrays, the People contend that in accordance with caselaw, the men in the other photographs resemble the defendant sufficiently to remove any suggestibility and therefore, the defendant’s suppression motion should be denied.

With respect to the single photograph shown to Ms. Crump, the Court finds that the People have met their burden of establishing a prior familiarity between the witness and the defendant rendering the witness impervious to suggestion (People v. Rodriguez, 79 N.Y.2d 445, 593 N.E.2d 268 (1992)). While testimony from Ms. Crump would have been the most effective form of evidence to establish this relationship, the testimony of Detective Hughes sufficiently demonstrated that Ms. Crump and the defendant knew each other in excess of one year and that they had “hung out” together many times. Moreover, Ms. Crump’s notations on the photograph of the defendant displayed to her confirm that she knew him and how the two met. As such, their relationship was more than simply fleeting or distant (see People v. Collins, 60 N.Y.2d 214, 456 N.E.2d 1188 (1983)).

With respect to the photographic arrays, the Court has had the opportunity to view both of them, which contain the same photographs, just in a different order. After doing so, the court finds that the other men depicted in the array have physical characteristics similar to the defendant and therefore, there was “little likelihood that the defendant would be singled out for identification,” (see People v. Redding, 132 A.D.3d 700, 700, 17 N.Y.S.3d 495 (2015), leave to appeal denied, 27 N.Y.3d 1005 (2016); see also People v. Curtis, 71 A.D.3d 1044, 900 N.Y.S.2d 68 (2010)). Additionally, the facts that the defendant’s photograph was the only one that took up the entire frame and only one of two with some color, do not render the array suggestive


(Redding, 132 A.D.3d 700; People v. Boria, 279 A.D.2d 585, 719 N.Y.S.2d 682 (2001)).

Furthermore, there is no evidence that the detective conducted the identification procedures so as to suggest a particular outcome to the witnesses. In fact, the evidence is clear that the detective advised the witnesses that the defendant may, or may not, be in the array and to only identify an individual if the witness was certain it was the defendant.

Therefore, the defendant's motion to suppress any in-court identification is denied.

This constitutes the opinion, decision, and order of this Court.

Dated: White Plains, New York
August 1, 2016



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Westchester County Court

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