

**People v Edwards**

2016 NY Slip Op 33237(U)

March 24, 2016

County Court, Westchester County

Docket Number: Indictment No. 15-0703

Judge: Barbara G. Zambelli

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FILED  
March 24 2016  
TIMOTHY C. IDOM  
COUNTY CLERK  
COUNTY OF WESTCHESTER

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 -

KEITH EDWARDS,

Defendant.

-----X

Indictment No: 15-0703

DECISION AFTER HEARING

ZAMBELLI, J.

The defendant has been indicted for the crimes of Attempted Murder in the Second Degree, Assault in the First Degree (two counts), Criminal Possession of a Weapon in the Second Degree, Attempted Robbery in the First Degree (two counts), Resisting Arrest and Obstructing Governmental Administration.

By decision and order dated November 13, 2015, the Hon. Robert A. Neary granted defendant's motion to suppress evidence to the extent of ordering a Wade hearing. A Mapp hearing was ordered but inasmuch as no physical evidence was recovered from the person of the defendant who was arrested pursuant to an arrest warrant, no Mapp hearing is required. Furthermore, no motion was made by defendant to controvert the search warrants issued in this case. The Wade hearing as held on March 23, 2016 wherein Detective Michael Farina of the Yonkers Police Department gave testimony.

[\* 1]

## FINDINGS OF FACT

The credible testimony adduced at the hearing on this case established that on March 26, 2015 Jack Margiye was shot while outside 88 William Street in Yonkers. The description of the shooter that was transmitted by police radio was of a black male, long braids, dark hooded sweatshirt. Detective Farina went to Jacoby Medical center to speak to the victim who told Detective Farina that he, the victim, had arranged to buy marijuana. He phoned the seller. The seller came out of the building at 88 William Street. He told the victim to give him, the seller, everything. There was a scuffle. The seller then pulled out a handgun. The seller shot the victim. The victim gave the phone number he had been given to contact the seller to Detective Farina. After checking, Detective Farina found that the phone number was associated with a Paul Campbell. Paul Campbell's name was put in the department's RICI system. The photo in the system matched the description given of the shooter. A photo array was prepared with fillers based on the descriptors for Paul Campbell. The array, Exhibit, 40, was taken to the victim at the hospital on March 27, 2015 by Detectives Farina and Piciulli. The victim was told that the array may or may not contain a picture of the shooter. He was told to focus on the eyes, nose, mouth; features that do not change and not hair styles or facial hair which may change. The victim looked at the photos and shook his head, he did not see anyone. On March 30, Detective Farina received information from Police Officer Lyons and Police Officer Forbes in the third precinct that "Beefy" a/k/a Keith Edwards fit the description of the shooter and may be the person responsible for the shooting. Detective Farina put Keith Edwards name into the

RICI system. He also put the name of Michael McCutcheon in the system based on other information he received. Two photo arrays were prepared, Exhibits 41 and 42. The fillers in Exhibit 41 were based on the descriptors from Keith Edwards' photo and the fillers in Exhibit 42 were based on the descriptors from Michael McCutcheon's photo. On March 30, Detectives Cave, Drain, and Farina went to the victim's home at approximately 2:30 p.m. to show the victim the arrays. The victim's family was present. The detectives and the victim sat on the living room couch. After giving the victim the same warning that he had been given in the hospital, Detective Farina showed him Exhibit 41. The victim pointed to defendant's photo stating "this is the guy." He said the defendant's hair was different. He was then shown Exhibit 42 and looked back at Exhibit 41. As to Exhibit 42, he said "No," looking back at Exhibit 41 and pointing to defendant's photo he said that he was definitely the guy who shot him. The victim circled defendant's photo in Exhibit 41, signed the photo, dated the photo, and the time of the identification, 2:40 p.m., was placed on the photo.

### **CONCLUSIONS OF LAW**

"A photo array is unduly suggestive 'where some characteristic of one picture draws the viewer's attention to it, indicating that the police have made a particular selection' (People v. Diggs, 19 A.D.3d 1098, 1098, 796 N.Y.S.2d 802, lv. denied 5 N.Y.3d 787, 801 N.Y.S.2d 808, 835 N.E.2d 668, rearg. granted 21 A.D.3d 1438, 801 N.Y.S.2d 551, quoting People v. Robert, 184 A.D.2d 597, 598, 585 N.Y.S.2d 445, lv. denied 80 N.Y.2d 929, 933, 589 N.Y.S.2d 857, 861, 603 N.E.2d 962, 966)." (People v. Smiley, 49 A.D.3d 1299, 1300). There is no requirement that all of the photographs have virtually identical characteristics

and features (See, People v. Acevedo, 84 A.D.3d 1390) What is required is that the photographs of fillers used in 6–person photo array be sufficiently similar in appearance to defendant's own photograph that they do not render the array unduly suggestive (Id).

Defendant contends Exhibit 41 is unduly suggestive because you can only see half of defendant's face, the facial features of the defendant are not distinct, the facial structure and features of the fillers are different, and none of the fillers have long braids.

Defendant's motion is denied. An examination of the photo array, Exhibit 41, reveals that each filler was of the approximate same age, skin tone, and hair style. There was no facial characteristic or lighting that would draw the viewer's attention to any one photograph in such a way as to indicate the police were urging a particular selection. (See, People v. Cunningham, 110 A.D.2d 708; People v. Powell, 26 A.D.3d 795; People v. Ofield, 280 A.D.2d 978) There is further no evidence that the police engaged in any improper conduct.

The foregoing constitutes the decision and order of the court.

Dated: White Plains, New York  
March 24, 2016

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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