

**People v Quiles**

2017 NY Slip Op 32683(U)

June 12, 2017

County Court, Westchester County

Docket Number: 06-1584

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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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**FILED**

ORDER and DECISION

VICTOR QUILLES,

JUN 12 2017

Ind. No.: 06-1584

Defendant  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
-----X

Blackwood, J.

On June 13, 2007, after a jury trial, this defendant was convicted of one count each of burglary in the second degree, criminal possession of stolen property in the fifth degree, and petty larceny (J. DiBella). He was acquitted of one count of criminal possession of stolen property in the fifth degree. The defendant was adjudicated a persistent violent felon and on August 31, 2007, was sentenced to an indeterminate term of imprisonment of eighteen (18) years to life on the burglary charge, and a definite one year sentence on the two latter counts, to be served concurrently.

The facts adduced at trial that lead to the defendant's conviction are as follows:

On November 3, 2006, the victim, Oscar Benegas was alerted by a friend that someone was heading towards his basement apartment, after jumping over a fence to access the property. When Mr. Benegas ran towards his apartment to investigate, he found the rear door to his apartment open and saw the defendant there. Mr. Benegas observed one of his shirts had been placed onto his bed and the drawer that the shirt had been in was open. Additionally, he noticed that twelve to fifteen dollars worth of quarters that had been in the same drawer, were missing.

After a brief confrontation between Mr. Benegas and the defendant, the defendant fled the area and Mr. Benegas gave chase while his friend called the police from his cellular

telephone. Mr. Benegas followed the defendant into a deli and his friend gave the police their location. When the police arrived a minute later, Mr. Benegas and his friend pointed inside of the store and the police positioned themselves right outside the main entrance. The defendant stepped outside with his hands up and was placed under arrest. After the arrest, the defendant removed from his sweatshirt pocket a pair of sunglasses that belonged to Mr. Benegas. The glasses had been stored in the same drawer Mr. Benegas found opened when he first entered his apartment.

At trial, Mr. Benegas was unable to identify the defendant as the person that had been inside of his apartment on the day of the burglary. However, he did testify that the person that he found inside of his apartment was the same person that he had followed into the deli. The prosecutor attempted to use a single photograph to have the witness identify the defendant. After a lengthy exchange between the witness and the prosecutor, much of which was objected to and stricken from the record, ultimately, the witness testified that the individual in the photograph was the same person that had been inside of his apartment and committed the acts he had described earlier in his testimony. The photograph was entered into evidence over defense counsel's objection. Then, after looking at the photograph, the witness pointed out the defendant as the person that was in his apartment and committed the acts he had described earlier.

After the guilty verdict, but prior to sentencing, the defendant filed a motion pursuant to CPL §440.10 claiming that there was insufficient evidence to convict him, ineffective assistance of counsel, that he was not competent to aid in his defense, that his conviction was the result of fraud and misrepresentation, and that the court erred in improperly admitting evidence at trial and charging the jury. The motion was denied in its entirety.

The defendant filed an appeal and his conviction was affirmed (People v. Quiles, 84

A.D.3d 1415, 923 N.Y.S.2d 889 [2011]). The Court of Appeals denied leave to appeal (People v. Quiles, 18 N.Y.3d 961, 967 N.E.2d 715 [2012]) and the United States Supreme Court denied certiorari (Quiles v. New York, 133 S.Ct. 449 [2012]). Subsequently, the defendant filed for a writ of habeas corpus in federal court. His petition was denied (Quiles v. Chappius, 2014 WL 4652742 [2014]) and the Second Circuit affirmed the denial (Quiles v. Chappius, 648 Fed.Appx. 83 [2016]). Neither of those actions contained the ground for this 440 motion, to wit: that the identification of the defendant by the victim at trial through the use of a single photograph was improper.

The defendant now, for the first time, argues that that photographic identification utilized by the prosecutor during trial to have the victim identify the defendant was unduly suggestive and that his conviction should be vacated as a result. The People respond by arguing that the defendant's claim is barred by CPL §440.10(2)(c) because the defendant failed to make this claim in his appeal. Furthermore, they argue, the error was harmless due to the overwhelming proof of the defendant's identity as the person who committed the charged crimes.

Section 440.10(2)(c) of the Criminal Procedure Law provides that a court must deny a motion to vacate a judgement of conviction when "sufficient facts appear on the record of the proceedings underlying the judgement to have permitted, upon appeal from such judgement, adequate review of the ground or issue raised upon the motion," and "no such appellate review or determination occurred owing to the defendant's unjustifiable failure . . . to raise such ground or issue upon an appeal actually perfected by him," (CPL §440.10[2][c]; see also, People v. Cuadrado, 9 N.Y.3d 362, 880 N.E.2d 861 [2007]). The court has been provided with a transcript of Mr. Benegas' testimony and in reviewing it, finds that sufficient facts appear on the record of the trial to have permitted the defendant to have raised this issue on appeal. Due to his

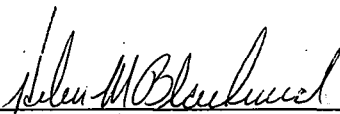
unjustifiable failure to do so, his motion to vacate is summarily denied (CPL §440.10[2][c]).

Moreover, the court finds, in reviewing the transcript and the papers submitted by the People, that the evidence of the defendant's identification was overwhelming. Unlike the circumstances in People v. Powell (105 A.D.2d 712, 481 N.Y.S.2d 157 [1984]), relied upon by the defendant, proof of the defendant's identification was established by several other pieces of evidence other than the photographic identification conducted with Mr. Benegas. For that reason, the defendant's argument is without merit.

For these reasons, defendant's 440 motion is summarily denied in all respects.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
June 12, 2017

  
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HON. HELEN M. BLACKWOOD  
Westchester County Court

TO: JAMES A. McCARTY  
Acting District Attorney  
Westchester County District Attorney's Office  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, New York  
Attn: Lisa Denig, Esq.

VICTOR QUILES  
DIN: 07-A-4929  
Auburn Correctional Facility  
P.O. Box 618  
Auburn, New York 13024