

People v Echols

2018 NY Slip Op 33768(U)

October 9, 2018

County Court, Westchester County

Docket Number: 18-0211

Judge: Larry J. Schwartz

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FILED

OCT 11 2018

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-against-

DECISION & ORDER

Indict. No. 18-0211

DARNELL ECHOLS and RAJAD DAILY,

Defendants.

-----X
SCHWARTZ, J.,

By Westchester County Indictment Number 18-0211, the defendants are charged with eight counts of burglary in the second degree and with possession of burglar's tools.

A *Mapp/Dunaway/Wade* hearing was conducted before this Court at which the People called Yonkers Police Detectives Michael Farina, John Viviano, Stephen Sokolik, Sheila McMaster, and Earl Adams, Sergeants Thomas Burke, Freddy Quezada and Officer Joseph Gannon. The defendants were identified in court.

Received into evidence at the above hearing were the People's Exhibits 36-40, 41-44, 46a, 47a, 49, 51, 55-64, 67, 69 and the Defendants' Exhibits A-C, E-I.

No witnesses testified for the defendants and they offered no evidence at the hearings.

At a *Mapp/Dunaway* hearing, the People have the burden of going forward to show the legality of police conduct which lead to the seizure of evidence and/or the obtaining of statements from the defendant. In seeking to challenge the propriety of the same conduct, the defendant bears the burden to show by a fair preponderance of the credible evidence that the police conduct was illegal (*see Mapp v Ohio*, 367 US 643 [1961]; *Dunaway v New York*, 422 US 1053 [1979]).

In *People v. De Bour*, 40 N.Y.2d 210, 386 N.Y.S.2d 375, 352 N.E.2d 562, the Court of Appeals "set forth a graduated four-level test for evaluating street encounters initiated by the police: level one permits a police officer to request information from an individual and merely requires that the request be supported by an objective, credible reason, not necessarily indicative of criminality; level two, the common-law right of inquiry, permits a somewhat greater intrusion and requires a founded suspicion that criminal activity is afoot; level three authorizes an officer to forcibly stop and detain an individual, and requires a reasonable suspicion that the particular individual was involved in a felony or misdemeanor; level four, arrest, requires probable cause to believe that the person to be arrested has committed a crime" (*People v. Moore*, 6 N.Y.3d 496, 498-499, 814 N.Y.S.2d 567, 847 N.E.2d 1141; *see People v. De Bour*, 40 N.Y.2d at 223, 386 N.Y.S.2d 375, 352 N.E.2d 562). "The Court's purpose in *De Bour* was to provide clear guidance for police officers seeking to act lawfully in what may be fast-

moving street encounters and a cohesive framework for courts reviewing the propriety of police conduct in these situations” (*People v. Moore*, 6 N.Y.3d at 499, 814 N.Y.S.2d 567, 847 N.E.2d 1141).

A forcible stop and detention is permissible “[w]here a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor” (*People v. De Bour*, 40 N.Y.2d 210, 223, 386 N.Y.S.2d 375, 352 N.E.2d 562; see *People v. Benjamin*, 51 N.Y.2d 267, 270, 434 N.Y.S.2d 144, 414 N.E.2d 645; *People v. Davenport*, 92 A.D.3d 689, 690, 939 N.Y.S.2d 473; *People v. Morales*, 58 A.D.3d 873, 874, 872 N.Y.S.2d 192). Reasonable suspicion has been defined as “that quantum of knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand” (*People v. Martinez*, 80 N.Y.2d 444, 448, 591 N.Y.S.2d 823, 606 N.E.2d 951 [internal quotation marks and citation omitted]). Whether a police intrusion has amounted to a forcible stop and detention turns on whether there has been “a significant interruption with an individual's liberty of movement” (*People v. De Bour*, 40 N.Y.2d at 216, 386 N.Y.S.2d 375, 352 N.E.2d 562; see *People v. Bora*, 83 N.Y.2d 531, 534, 611 N.Y.S.2d 796, 634 N.E.2d 168). Where the police block a defendant's car to prevent it from moving, the police officers “stopped” it and thus must have had a reasonable suspicion to do so (*People v. Jennings*, 45 N.Y.2d 998, 999, 413 N.Y.S.2d 117, 385 N.E.2d 1045; see *People v. Hurdle*, 106 A.D.3d 1100, 1104, 965 N.Y.S.2d 626; *People v. Lopez*, 75 A.D.3d 610, 612, 905 N.Y.S.2d 647).

Resolution of the issue of whether the police officers possessed reasonable suspicion requires evaluation of the totality of the circumstances (see *People v. Williams*, 69 A.D.3d 663, 664, 893 N.Y.S.2d 130; *People v. Hoover*, 236 A.D.2d 626, 628, 653 N.Y.S.2d 955; *People v. Graham*, 211 A.D.2d 55, 58–59, 626 N.Y.S.2d 95).

At a *Wade* hearing, the defendant must show that the noticed identification was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the Court must determine whether the identifications were so improperly suggestive as to taint any in-court identification.

I find the testimony offered by the People’s witnesses to be plausible, candid, and fully credible. I make the following findings of fact:

FINDINGS OF FACT

In or about November 2017 the Yonkers Police Department began investigating a rash of laundry room burglaries that had occurred within the City of Yonkers in the County of Westchester, New York. The police noted a pattern to the burglaries. In most instances the burglar(s) forcefully entered an apartment building’s lobby and then entered the laundry room. In the laundry room the cash machine was cut using some type of cutting tool and money was stolen from the cash machine. On December 21, 2017, the police received reports of laundry room burglaries, at 15 St. Andrews Place, 50 St. Andrews Place, and 480 Riverside Avenue in Yonkers.

As part of their investigation of the December 21st burglaries, the police viewed video surveillance footage recovered from 15 St. Andrews Place and nearby 496 South Broadway. The black and white surveillance video from 15 St. Andrews Place showed two individuals enter with a crowbar into the lobby around the time of the burglary. They then proceed to the laundry room. Thereafter, the video shows them exit 15 St. Andrews Place, go to a particular car parked up the block at 7 St. Andrews Place with the engine running and drive away. The getaway car is seen on that video travelling toward South Broadway, which intersects with St. Andrews Place and turning left onto South Broadway, where it is seen on surveillance video taken from 496 South Broadway. By analyzing the times of both videos, the police were able to identify the getaway car on the 496 South Broadway video, which was a color video. From that video they were able to discern the car was a red two-door Nissan or Infiniti coupe, with a silver grill with a car emblem or logo in the middle and that the car had a yellow license plate fixed very low on the front center of the car and has dark wheels or rims. The police generated still-frame photos from the 496 S. Broadway video, four of which were entered into evidence (People's Ex. 36-40).

On December 30, 2017 a special detail was assembled in an attempt to search for the individuals responsible for the burglaries and the getaway car. There were roughly a dozen members of the Yonkers PD assembled around midnight that morning. Those participating in the detail were given copies of the still-frame photos showing the getaway car.

At 1:20 a.m. that morning, P.O. Gannon spotted a red coupe that matched the photograph and the description of the getaway car parked at 34 Parkhill Avenue in Yonkers. It was red two-door Nissan Altima coupe with a silver grill with Nissan emblem in the middle of the grill. The car ("Subject Car") also had a yellow New York State license plate fixed very low on the front center of the car and had dark wheels with missing hubcaps. P.O. Gannon parked across the street from and began surveillance of the car. He also contacted headquarters and ran the plates. He was advised by dispatch that the vehicle was registered to Jonathan Terry of 129 Highland Avenue in Yonkers.

At 4:16 a.m., while P.O. Gannon was still watching the Subject Car, a radio dispatch advised the officers of a possible burglary in progress. A caller reported seeing two men in masks at 900 Palmer Avenue in Yonkers walking in the direction of the building's laundry room at 900 Palmer Avenue. The incident was about four miles away from P.O. Gannon's location.

At 4:40 a.m., while still surveilling the Subject Car, P.O. Gannon observed a dark colored sedan pull up and park on Park Hill Ave, near where P.O. Gannon was parked. He observed three individuals get out of the dark sedan, cross the street, get into the Subject Car and drive away.

P.O. Gannon and other members of the special unit followed the Subject Car to Van Cortlandt Park Ave. Although the Subject Car was not in P.O. Gannon's continuous view, he observed the Subject Car minutes later parked in front of a fire hydrant near an apartment building at 107 Van Cortlandt Park Ave. The police observed one person in the Subject Car, in the driver's seat, parked in front of a fire hydrant, the engine idling and the headlights off.

At about 4:53 a.m. the police observed two men get into the Subject Car, the car's headlights come on, and the occupants drive off. Some of the officers stayed behind at 107 Van Cortland Avenue to investigate whether a burglary had occurred, and others followed the Subject Car.

The police followed the Subject Car until they arrived on Couter Avenue, still in Yonkers. At this point an officer following the vehicle was concerned the car would proceed to the Saw Mill River Parkway which was nearby and the police would lose sight of the car. Suddenly, at about 5:07 a.m. the Subject Car veered left, then right, then suddenly stopped on Courter Avenue in front of and blocking a residential driveway.

One unmarked police car pulled in front of the Subject Car and another behind it. There were three occupants observed by the police in the Subject Car. Sgt. Viviano got out of one of the police cars and as he approached the driver's side, the Subject Car started to pull away. Sgt. Viviano identified himself as a police officer, displayed his badge and directed the driver to stop. The car stopped, and several police officers approached the car. Officers approached and spoke with the driver and front passenger of the car, initially while the occupants were seated in the car. While outside the car Officers saw, in plain view, a portion of a crowbar, and a cutting tool (a grinder) in the car's back seat and a pile of cash on the floor at the feet of the front passenger. The occupants were directed to get out of the car and were patted down for officer safety. The occupants were identified—Jonathan Terry was the driver, Darnell Echols was the front passenger, and Rajad Daily was the rear passenger.

While outside the car, at 5:09 a.m. members of the unit reported over police radio that there had in fact been a laundry room burglary at 107 Cortland Park Ave were the officers had seen the occupants of the Subject Car enter the vehicle. The members of the unit at 107 Van Cortlandt Park Avenue found the cash box in the laundry room had been cut and there was the strong smell of cut metal detectable in the lobby that got stronger as they entered the laundry room. The odor led them to believe the burglary had recently occurred. At that point the 3 occupants of the car were handcuffed, placed under arrest, and transported back to the police station. The Subject Car was sealed by the police until search warrant for the vehicle was obtained and the warrant was executed on January 10, 2018.

Pursuant to these findings of fact, I make the following conclusions of law:

CONCLUSIONS OF LAW

A. Stop of the Vehicle

That here, even though the driver of the Subject Car stopped the vehicle voluntarily, when the police officers parked the vehicles in front and behind the Subject Car, the incident became a forcible stop as the occupants of the vehicle were not free to leave (*see Jennings* at 999). Thus, a *De Bour* level three analysis is required.

I find the police officers had a sufficient reasonable suspicion when they stopped the Subject Car. The totality of the circumstances including (1) the Subject Car matched the

description and still-frame photos of the getaway car in which two individuals with a crowbar departed from 15 St. Andrews around the time of a laundry room burglary (captured on surveillance video), (2) the police observed individuals enter the Subject Car at 4:40 a.m. less than half an hour after another possible laundry room burglary in Yonkers was reported, (3) that police shortly thereafter observed one person in the Subject Car, in the driver's seat, parked in front of a fire hydrant, with the engine idling and the headlights off, while it was still dark outside, (4) and then moments later observed two men get into the Subject Car, the car's headlights come on, and the occupants drive off together gave the officers a reasonable suspicion that the occupants of the Subject Car had committed, were committing or were about to commit a felony or a misdemeanor (*see De Bour* at 233).

Accordingly, the physical evidence seized from Subject Car was not the product of an unlawful stop of a vehicle and will not be suppressed.

B. Arrest

That the police had probable cause to arrest the defendants after the stop and observing the money, grinder and crowbar in the Subject Car and receiving confirmation by radio transmission that there had been a laundry room burglary at 107 Van Cortlandt Park Avenue (*Mapp v Ohio*, 367 US 643 [1961]). Accordingly, the recovery of the tangible evidence was not the produce of an unlawful arrest and the motion to suppress this evidence is denied.

C. Identification

That the noticed identifications were not unduly suggestive police identification procedures. (*United States v Wade*, 388 US 218 [1967]). People's Exhibit 58-60 were pictures of the defendant in the clothing they were wearing at the time they were arrested shown to the police officers before their grand jury testimony. Accordingly, the police officers will be permitted to identify the defendants in court at trial.

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

Dated: White Plains, New York
October 9, 2018



Hon. Larry J. Schwartz
Westchester County Court Judge