

People v Dasent

2018 NY Slip Op 34030(U)

November 28, 2018

County Court, Westchester County

Docket Number: 18-0691

Judge: Larry J. Schwartz

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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against- **FILED**
NOV 30 2018

DECISION & ORDER

Indict. No. 18-0691

JASMINE DASENT,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendants.

-----X
SCHWARTZ, J.,

By Westchester County Indictment Number 18-0691, the defendant is charged with criminal possession of a weapon in the third degree and menacing in the second degree.

On November 19, 2018, a *Mapp/Dunaway/Huntley/Wade* hearing was conducted before this Court at which the People called Yonkers Police Officer Christopher Guziczek. The defendant was identified in court.

Received into evidence at the above hearing was People's Exhibit 7a.

No witnesses testified for the defendant.

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]).

"Law enforcement officers may properly seize an item in 'plain view' without a warrant if (i) they are lawfully in a position to observe the item; (ii) they have lawful access to the item itself when they seize it; and (iii) the incriminating character of the item is immediately apparent" (*People v Velasquez*, 110 AD3d 835, 835 [2d Dept 2013]).

At a *Huntley* hearing, the People have the burden of showing whether any statements allegedly made by the defendant, which have been noticed pursuant to CPL 710.30 (1)(a), were voluntarily made by the defendant within the meaning of CPL 60.45 (*see* CPL 710.20 (3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]) and/or obtained in accord with defendant's Sixth Amendment right to counsel.

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

On or about June 5, 2018, at approximately 7:10 P.M., Officer Guziczek was assisting two disabled vehicles in the vicinity of the McLean Avenue Bridge on the northbound shoulder of the Saw Mill River Parkway, City of Yonkers, County of Westchester when he was flagged down by the driver of black Toyota taxi with New York City plates. The driver, Adnan Malik, stated that he needed help and the officer directed him to pull over.

The driver did so, exited the vehicle and approached the officer. He reported that the defendant, who was in the back seat of the taxi on the driver's side, pulled a knife on him, held it to his stomach and threatened to stab him. Mr. Malik said she did so after her told her to stop trying to light a cigarette in his vehicle and to put it out. Mr. Malik pointed to the defendant still sitting in the taxi and identified her as the person who pulled a knife on him (the "Noticed Identification"). Mr. Malik told the officer the defendant's female companion, Gillian Smith, who was also in the back of the taxi, had "nothing to do with it."

Officer Guziczek then radioed to notify dispatch that he was changing his "job" to a possible menacing with a knife and shortly thereafter other officers responded to assist. Mr. Malik stated to Officer Guziczek that he believed the knife that was pulled on him was a two to three-inch-long blade, silver in complexion.

Officer Guziczek then approached the vehicle and removed the defendant from the vehicle. She stated, "I didn't do anything," and when asked if she had a knife on her she said "No." (together the "First Noticed Statement"). He performed a pat-down for officer safety and noticed she was intoxicated and had a strong odor of marijuana. The officer then spoke to the defendant's companion, Ms. Smith. She stated that the defendant did indeed hold a knife to the driver of the taxi. The defendant was then placed under arrest. Another officer transported the defendant to headquarters.

At headquarters, the transporting officer, Officer Faust, advised Officer Guzicek that the defendant had slipped her handcuffs off while in the police vehicle. When Officer Guzicek next saw the defendant at the station, she was in a cell and had taken off her pants down to her boxer shorts. Officer Caporale, a female officer, then removed the defendant from her cell to take her to a designated private area to perform a search. As the defendant was being walked to that private area, Officer

Guzicek observed a metal blade fall from the groin area of the defendant's shorts to the floor. He observed the knife blade, without a hilt, on the floor. For officer safety, he asked the defendant where the blade came from. She stated, "In my front private area, from my pussy. What do you think?" ("Second Noticed Statement"). The knife was taken into evidence (People Ex. 7a).

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

CONCLUSIONS OF LAW

A. Custody/Voluntariness of Statements

That the First Noticed Statement made by the defendant was not the product of custodial interrogation and *Miranda* warnings were not necessary.

"It is well settled that the applicable standard for determining whether interrogation is or is not custodial is what 'a reasonable man, innocent of any crime would have thought had he been in the defendant's position... [R]oadside detentions have been held to be noncustodial and reasonable initial interrogation attendant thereto has been held to be merely investigatory" (see *People v Mason*, 157 AD2d 859 [2d Dep't 1990] quoting *People v Yukl*, 25 NY2d 585 [1969]).

Accordingly, the subjective beliefs of the defendant are not determinative in this regard, nor are the uncommunicated beliefs of the police officer who recorded the noticed statement. The determination of custody depends upon the objective circumstances which existed at the time that the noticed statement was made by the defendant.

Factors which the Court has considered on this issue include:

1. The amount of time the defendant spent with the police;
2. Whether the defendant's freedom of movement was restricted and if so, in what manner;
3. The location and atmosphere of the questioning;
4. The degree of cooperation exhibited;
5. Whether constitutional warnings were given;
6. Whether questioning was investigatory or accusatory in nature.

Here, since the Court finds the officer's questions at the time were investigatory in nature, the People will be permitted to use First Noticed Statement at trial.

I also find that the Second Noticed Statement is admissible as one that falls under the public safety exception of the *Miranda* rule (see *People v Williams*, 191AD2d 526 [2d Dept 1993]). Here, the officer's question which elicited the Second Noticed Statement was proper to ascertain the source of the knife blade that fell from

the defendant's person. Accordingly, the People will be permitted to use the Second Noticed Statement at trial.

B. Arrest

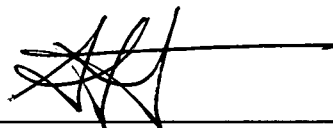
That the police had probable cause to arrest the defendant after Mr. Malik and Ms. Smith advised that the defendant had pulled a knife and held it to Mr. Malik (*Mapp v Ohio*, 367 US 643 [1961]). Accordingly, the recovery of the tangible evidence was not the product of an unlawful arrest and the motion to suppress this evidence is denied.

C. Identification

That the Noticed Identification was not unduly suggestive police identification procedures. (*United States v Wade*, 388 US 218 [1967]). Mr. Malik's unprompted identification of the defendant at the scene was not a police-arranged identification procedure nor was it unduly suggestive. Accordingly, Mr. Malik will be permitted to identify the defendant in court at trial.

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

Dated: White Plains, New York
November 28, 2018



Hon. Larry J. Schwartz
Westchester County Court Judge

To:

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601

ROBERT SCHNEIDER, ESQ.
576 Kimball Avenue
Yonkers, NY 10704