

People v Yeara

2020 NY Slip Op 35227(U)

September 22, 2020

County Court, Wayne County

Docket Number: Ind. 20-22A

Judge: Daniel G. Barrett

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At a Term of the County Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 17th day of September, 2020.

PRESENT: Honorable Daniel G. Barrett
County Court Judge

STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DEREK B. YEARA,

DECISION AND ORDER
ON WADE HEARING
Ind. No. 20-22A

Defendant

Appearances - People - Christine Callanan, Esq., ADA
Defendant - Eric Smith, Esq.

The Court had scheduled a Wade Hearing at the request of defense counsel. Testimony and evidence was presented by Ms. Callanan. Defense counsel chose not to offer any evidence and/or testimony on behalf of the Defendant. The Court reserved Decision.

The purpose of a Wade Hearing is the admissibility of identification by the victim of the Defendant. People have the burden of going forward to establish both reasonableness of police conduct and lack of suggestiveness in the identification procedure used, People v Ortiz, 90 N.Y. 2d 533. The defense has the ultimate burden of proving that the identification procedure was unduly suggestive, People v Chipp, 75 N.Y. 2d 327.

The first and only witness for the People was Detective Sergeant Joseph Ayotte hereafter referred to as Investigator Ayotte. Investigator Ayotte testifies he became involved in the case on or about January 17, 2020 regarding the assault on Mr. Young. On January 18, 2020 he was tasked to proceed to meet with the victim, Rodney Young, in an apartment in Irondequoit, New York. The purpose of that was to present to Mr. Young a photo array.

Investigator Ayotte delivered to Mr. Young an envelope with the photo array in it. The photo array was prepared by Investigator Kevin Kuntz. Investigator Ayotte was aware that Derek Yeara may be a suspect as well as Kenneth Wilson. Investigator Ayotte did not know Derek Yeara and had no contact with him.

Investigator Ayotte handed the envelope to Mr. Young with instructions to retrieve the photo array and advise if he recognized anyone in the said photo array. Mr. Young advised he recognized picture number 4. He was directed to put his initials on it and to fill in the comment box at the end of the photo array. The Court has viewed the photo array and it shows the initials of Mr. Young at photo number 4 and in the comment box he wrote "the dude in number 4." Investigator Ayotte identified Mr. Yeara in the courtroom as the gentlemen in photo number 4.

Investigator Ayotte did not show the second photo array to Mr. Young as that dealt with the other suspect, Kenneth Wilson.

Investigator Ayotte testifies he did not make any suggestions to Mr. Young about identifying Derek Yeara. He made no gestures, threats, no coercion, etc.. He simply told Mr. Young to look at the photo array and if he saw anyone that he recognized as the suspect in the assault upon him to simply point him out, put his initials on it and write any comments in the box at the bottom of the photo array.

On cross examination Mr. Ayotte was questioned by defense counsel Eric Smith regarding the fact that he had no jurisdiction in Irondequoit. Investigator Ayotte testified he had two Irondequoit police officers accompany him to the apartment complex in Irondequoit.

He also acknowledged that Jill Wood, the other victim, did identify Derek Yeara at the hospital. She advised that she had known Mr. Yeara for years. She gave certain information to Investigator Kuntz.

Investigator Ayotte states that Mr. Young took the photo array out of the envelope and that he never actually saw the photo array.

He further indicates that there is a second form in the envelope which indicates who the suspects are in the photo array but that Mr. Young was not given that photo array and/or did not see said photo array.

Previously Investigator Ayotte had seen Mr. Young at the hospital and indicated he did not know Derek Yeara and did not know his name he just identified him as the "taller skinnier guy" but he did know Kenneth Wilson.

Investigator Ayotte said there were other people in the apartment but he didn't know who they were, he assumed they were family members and/or friends. The Irondequoit police officers did not accompany him into the living with Mr. Young. They stayed in the kitchen area.

Investigator Ayotte then explained about the procedure for the photo array and he went through the steps of creating the photo array and how it is presented to a particular victim, in this case Rodney Young.

Investigator Ayotte testifies he stated that the suspect may or may not be in the photo array and to point him out if Mr. Young could and he did so. It only took a few seconds.

The photo of the Defendant Derek Yeara was determined to be a photo from November 12, 2013. Further Investigator Ayotte indicates although sometimes the photo array process is videoed, this particular photo array process was not videoed.

In closing comments Mr. Smith points out, on behalf of the defendant, that Rodney Young and Jill Young are boyfriend/girlfriend and that she could have told him about Derek Yeara and/or otherwise identified Derek Yeara to Mr. Young. However, as pointed out in court, that was peer speculation and not part of the record.

Essentially Mr. Smith argues that procedurally Mr. Ayotte had no jurisdiction to act in Monroe County. The Court does not understand this point. Mr. Smith did not offer any statutory or case law regarding the photo array being determined to be inappropriate or otherwise not procedurally correct if it was done outside the county where the crime took place. In any event that has nothing to do with the issue whether the photo array as presented and prepared by the People was unduly suggestive.

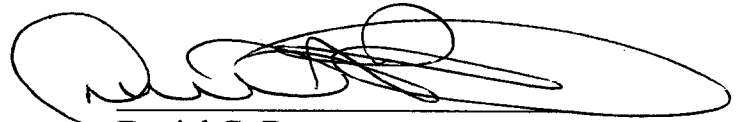
Mr. Smith further points out that Mr. Young could have seen the second sheet in the envelope and therefore may have seen who in fact Derek Yeara was by looking at that sheet. However, there is no testimony or evidence to that, in fact, there is testimony to the opposite.

Ms. Callanan in closing points out the arguments made by defense counsel are speculative. That the photo array was done appropriately and pursuant to procedure and that it was not unduly suggestive.

The Court finds that the People have met their burden of proof that the photo array process was not unduly suggestive. The Defendant offered no evidence or proof to otherwise suggest that the photo array process was unduly suggestive. The Court finds the photo array process was done correctly and it was not unduly suggestive and therefore the identification of the Defendant by Rodney Young is admissible at trial.

This constitutes the Decision and Order of the Court.

Dated: September 22, 2020
Lyons, New York

A handwritten signature in black ink, appearing to read "Daniel G. Barrett", enclosed within a large, irregular oval scribble.

Daniel G. Barrett
County Court Judge