

People v Williams

2020 NY Slip Op 35437(U)

February 28, 2020

Supreme Court, Westchester County

Docket Number: Indictment No. 19-0662

Judge: Barry E. Warhit

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No.: 19-0662

MICHAEL WILLIAMS,
Defendant.

FILED

FEB 28 2020

TIMOTHY D. EDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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WARHIT, J.

Michael Williams ("defendant") is charged under the within indictment with two counts each of attempted murder in the second degree, criminal possession of a weapon in the second degree, attempted assault in the first degree and attempted assault in the second degree. By Decision and Order, filed November 12, 2019, this Court (Fufidio, JCC) granted Defendant's counseled Omnibus Motion to the extent of, *inter alia*, ordering pre-trial *Wade* and *Mapp* hearings and granting preclusion of statements allegedly made by the defendant to law enforcement but not timely noticed by the People.

On February 25, 2020 the came before this Court. The People represented they would only be seeking an in-court identification from one of the two witnesses who participated in the police arranged single photographic identification procedure and, as to this procedure, conceded the law required them to demonstrate an independent source for the identification. The defense acknowledged it was no longer seeking a *Mapp* hearing with respect to property recovered pursuant to a proper search warrant and clarified no such a hearing was sought with respect to property, if any, recovered

from the defendant's person at the time of his arrest. Additionally, the defense conceded a *Wade/Rodriguez* hearing was unnecessary with respect to confirmatory identifications of defendant allegedly made by his wife and declined a *Harris* hearing in connection with the statements for which the Court had granted preclusion. Accordingly, the sole hearing this Court conducted was an independent source hearing regarding the alleged identification of the defendant by Lieutenant Arnold Hughes ("Lt. Hughes").

Lt. Hughes was the sole witness who provided testimony at the hearing. Having had the unique opportunity to hear his testimony, observe his demeanor and examine the documentary evidence offered, this Court finds Lt. Hughes to be credible and makes the following findings of fact.

FINDINGS OF FACT

Lt. Hughes is a thirty-one year veteran of the Co-op City Department of Public Safety. Members of the Mount Vernon Police Department and the Bureau of Alcohol, Tobacco and Firearms ("ATF") approached him during the late night hours of August 28, 2018 or the early morning hours of August 29, 2018 and informed the lieutenant they were looking for a particular white Mercedes Benz which they believed to be parked within the confines of Co-op City and showed Lt. Hughes a photograph of the car which included the individual driving same. Lt. Hughes testified both the car and the gentleman were familiar to him. The car was located in a parking structure within Co-op City.

Some six months later, on April 25, 2019, Lt. Hughes again spoke with members of the Mount Vernon Police Department and Agent Wilson of ATF. According to Lt. Hughes, the officers informed him their investigation concerning the white Mercedes Benz about which they had previously spoken and which had been located within Co-op City was continuing. Lt. Hughes was asked to look at photographs and indicate whether he recognized the individual depicted. The first photograph, admitted into evidence at the hearing, is of a black male standing and facing the camera; the second photograph, also admitted into evidence, depicts the profile of a black male seated in the passenger seat of a white vehicle. Lt. Hughes reported that neither the Mount Vernon Police officers or any ATF agent encouraged him to make an identification or otherwise suggested the identity of the individual shown in either photograph. Lt. Hughes testified that, upon looking at the first photograph, he indicated that, although he did not know the name of the individual, he recognized him as someone he had seen while on foot and vehicle patrol on a minimum of two previous occasions in the Alcott Circle section of Co-op City. Lt. Hughes identified the driver of the vehicle in the second photograph as being the same individual depicted in the first photograph. Significantly, Lt. Hughes testified that although he was certain he recognized the individual depicted in the photographs as someone he had observed on at least two occasions in his capacity as a lieutenant assigned to patrol the Alcott Circle area of Co-op City, he could not recall particular or approximate dates on which he had seen this individual or any of the circumstances relating to his observations of him.

CONCLUSIONS OF LAW

It is well settled that a suggestive or otherwise improper identification procedure violates due process and is not admissible to determine the guilt or innocence of a defendant (*US v. Wade*, 388 US 218). As a general rule, the showing of a single photograph violates a defendant's due process rights and, as such, any resulting in-court identification must be suppressed (*Id.*) An exception to this rule lies where, at a hearing, it is established by clear and convincing evidence that the identifying witness had an independent basis for having made the identification which was not the product of or affected by, the police arranged identification procedure (see, *Manson v Brathwaite*, 432 US 98 [1977]; *People v. Underwood*, 239 AD2d 366 [2d Dept. 1997]; *People v. Chipp*, 75 NY2d 327 [1990]); *People v. Rahming*, 26 NY2d 411, 416 [1970]). Said another way, there must be evidence that the identification "was based on observations of the defendant other than the improper pretrial identification" (*People v. Lcgan*, 25 NY2d 184 [1969], citing, *People v. Ballott*, 20 NY2d 600, 606-607). The People bear the burden "to establish that the in-court identification was 'come at by . . . means sufficiently distinguishable to be purged of the primary taint'" (*Underwood*, 239 AD2d at 267). The People have not met this burden in the instant case.

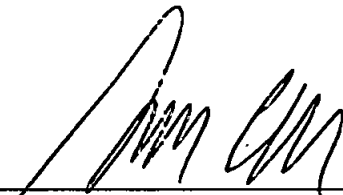
Lt. Hughes testified he recognized the defendant from having observed him on at least two occasions while conducting routine patrols within Co-op City. The lieutenant candidly acknowledged he did not recall any specific encounter with the defendant and could not recollect the dates or approximate dates on which he had observed him or the circumstances of his observations. Lt. Hughes merely professed to have a good

memory for faces. Upon this record this Court cannot reasonably conclude that Lt. Hughes "had an opportunity to view the defendant under circumstances conducive to the observation of his features" or that he had sufficient knowledge of the defendant so as to have been able to identify him regardless of the unlawful police arranged identification procedure (see, *People v. Brown*, 187 AD2d 872 [3d Dept. 1992]; cf., *People v. Stacey*, 173 AD2d 960 [3d Dept. 1991])(finding independent source where a witness observed a defendant engaged in a two minute conversation in bright sunlight from a distance of three feet; *People v. Ware*, 173 AD2d 903[3d Dept. 1991])(finding independent source where investigators observed a suspect on three separate occasions for a sufficient period of time in good lighting).

Therefore, the motion to suppress the in-court identification of the defendant by Lt. Hughes is granted and the People shall not be permitted to elicit an in-court identification of the defendant by Lt. Hughes at trial.

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

Dated: White Plains, New York
February 28, 2020



HON. BARRY E. WARHIT
Supreme Court Justice, Westchester County

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