

People v Rickard

2021 NY Slip Op 33179(U)

October 22, 2021

Supreme Court, Westchester County

Docket Number: Indictment No. 19-00488-05

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

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 COUNTY OF WESTCHESTER

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 COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

DAMIEN RICKARD,

Ind. No. 19-00488-05

Defendant.

-----X

NEARY, J.

The following constitutes the opinion, decision and order of the Court:

The defendant has been indicted for the crimes of Attempted Murder in the First Degree and Conspiracy in the Second Degree. It is alleged that on or about March 16, 2019 the defendant and others did attempt to cause the death of a witness in a criminal case.

In his Omnibus Motion, co-defendant Jason Garcia sought suppression of any physical evidence seized in the case either through the execution of search warrants or obtained without a warrant.

By decision dated August 27, 2019, the Honorable Anne E. Minihan denied co-defendant Garcia's suppression motion with regard to evidence seized as the result of any search warrant(s) but granted a *Mapp/Dunaway* hearing concerning evidence **not** seized pursuant to the several search warrants that were executed in this case, **provided** he (Garcia) could establish standing to contest the warrantless search(es).

Per the People's representation during pre-trial conferences and via Consent Discovery filings, the only evidence obtained without a warrant that the People intend to offer at the joint trial of this defendant, Damien Rickard, and co-defendant Jason Garcia, are a handgun and cell phone seized from Damien Rickard when he was arrested on March 16, 2019. To date, co-defendant Garcia has failed to demonstrate any standing to contest the seizure of those two (2) items.

To the contrary, the Omnibus Motion filed on behalf of Damien Rickard when read in conjunction with the People's response and their Discovery filings, led the Court to grant defendant Rickard a *Mapp/Dunaway* hearing which was held on October 20, 2021. The hearing also addressed the audibility of certain tape recorded conversations.

At the hearing the People called as witnesses Westchester County District Attorney's Investigators Steve Sassone, Patrick Coughlin and Edward Murphy, Jr. and Yonkers Police Detective James McDonough. The Court finds the testimony of the People's witnesses to be candid, plausible and fully credible. The defense presented no witnesses and offered no evidence. The People's exhibits included three (3) tape recorded conversations with transcripts and a photo of defendant Rickard. The Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

In the course of a court authorized wiretap on March 14, 2019, a phone conversation between an incarcerated Jason Garcia and Laquanna Kershaw was intercepted during which the couple discuss the merits of the evidence against Garcia in a pending attempted murder case. In addition to placing himself at the scene of the underlying crime, Jason Garcia refers to “touching” and “eliminating” a witness and seeks information about where the witness resides.

On March 15, 2019 at 10:13 P.M., a three way call was intercepted among Jason Garcia, Cassaundra Dunham and Damien Rickard. During this conversation, Garcia tells Rickard that Dunham is going to give him “. . . an Allen key, the Allen key is basically for um, I got the beam on top, could take it off if you want or you could leave it on, it’s up, it’s your choice.” In the next sentence, Garcia tells Rickard: “Um, as far as the dog food, I got a little dog food in there for the dog” Moments later Garcia tells Rickard in substance he is going to have everything lined up and have “Q” (Laquanna Kershaw) get it and pass it off to him (Rickard). Earlier in the three way conversation, Dunham provides her address – 286 Park Avenue – to Rickard and arrangements are made for him to pick up something from her the next day. Garcia advises Rickard to make sure he has a ride since he doesn’t want him “walking around with that thing.”

On the morning of March 16, 2019, a team of Westchester County District Attorney Office investigators and Yonkers detectives conducted a surveillance of 286 Park Avenue in Yonkers. Investigator Patrick Coughlin armed with a photo of Rickard and situated directly across the street from that residence observed Rickard exit a white Honda Pilot vehicle

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with livery plates and walk half-way up the driveway where he was met by Dunham who handed him a paper bag. Rickard reentered the taxi which proceeded south on Park Avenue.

Investigator Coughlin radioed his observations to fellow team members and Yonkers Detective James McDonough and his partner conducted a traffic stop of the Honda Pilot three blocks away. Defendant Rickard was removed from the vehicle's rear seat and a brown paper bag containing a handgun was recovered on the seat next to him. He was placed under arrest and a cell phone was recovered from his person.

CONCLUSIONS OF LAW

On a motion to suppress physical evidence, the People have the burden of going forward to show the legality of the police conduct in the first instance. [See *People v. Whitehurst*, 25 NY2d 389]. This implies they do so by presenting credible testimony. Once the People establish the legality of the police conduct, the burden shifts to the defendant to demonstrate that the arrest was not based upon probable cause or that the police conduct was otherwise illegal. [See *People v. Spann*, 82 NY2d 1014].

Here, the People have demonstrated the legality of the police conduct at issue. Veteran Investigators involved in a long term wiretap case intercepted thinly disguised conversations involving plans to "touch" and/or eliminate witnesses in an active prosecution. They had abundant reasonable suspicion to believe criminal activity was afoot and that a weapon would be exchanged at a certain location in Yonkers at a given time and date. Reasonable suspicion has been defined as "that quantum of knowledge sufficient to induce an ordinarily

prudent and cautious person under the circumstances to believe criminality is at hand. “ [See *People v. Cantor*, 36 NY2d 106; *People v. Martinez*, 809 NY2d at 448].

Once the investigators observed the paper bag exchanged at the Park Avenue address, they had reasonable and probable cause to stop the white Pilot taxi and detain defendant Rickard. Upon discovery of the gun in the bag on the back seat, there was probable cause to arrest the defendant. The “Fellow Officer” rule justifies the warrantless arrest of individuals by officers who receive transmissions from other officers who had probable cause to arrest the individual after observing the person engage in suspected criminal activity. [See *People v. Rosario*, 78 NY2d 583]. The automobile exception to the warrant rule authorized the officers to make a contemporaneous search of the vehicle’s passenger compartment and any closed containers therein. [See *People v. Blasich*, 73 NY2d 673, 678; *People v. Belton*, 55 NY2d 49, 53-55].

The Court is hard pressed to conjure any innocent interpretation regarding the substance of the three wiretap conversations received into evidence at this hearing. Indeed, one of the female participants warns Garcia not to be talking about such things on her phone. In the March 14, 2019 call, it is clear that Garcia acknowledges being at the scene of an earlier shooting and he is considering his options to avoid conviction up to and including eliminating witnesses. It is similarly clear that an experienced police detective would be readily able to conclude from the three conversations in evidence that there was going to be the transfer of a weapon on March 16th at 286 Park Avenue.

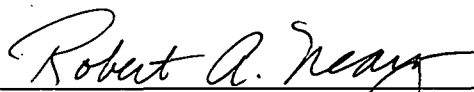
Based upon the totality of the circumstances described above, the Court determines that the handgun and cell phone seized at the time of defendant Damien Rickard’s arrest is not subject to suppression by either defendant Garcia or Rickard. The Court further

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finds that the aforementioned taped conversations are sufficiently audible to be played in court during the trial.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
October 22, 2021


ROBERT A. NEARY
SUPREME COURT JUSTICE

John O'Rourke
Assistant District Attorney
Westchester County
Office of the District Attorney
Richard J. Daronco Courthouse
111 Martin Luther King Blvd.
White Plains, New York 10601
jorourke@westchesterda.net

Brendan O'Meara, Esq.
Attorney for Defendant Damien Rickard
O'Meara Law Firm
200 East Post Road
White Plains, New York 10601
bomeara75@gmail.com

Angelo MacDonald, Esq.
Attorney for Defendant Jason Garcia
The MacDonald Law Firm
200 W. 6th Street, Apt. 3A
New York, New York 10023
gothamlaw@yahoo.com