

People v Rogers

2021 NY Slip Op 34088(U)

September 22, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 20-00570-01

Judge: Robert A. Neary

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**FILED
AND
ENTERED
ON 9-22-2021
WESTCHESTER
COUNTY CLERK**

FILED *TC*

SEP 22 2021

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

PRINCE ROGERS,

Ind. No. 20-00570-01

Defendant.

-----X
NEARY, J.

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

The defendant has been indicted for the crimes of Robbery in the First Degree, Assault in the Second Degree, Grand Larceny in the Fourth Degree and Criminal Possession of a Weapon in the Third Degree. It is alleged that on or about November 18, 2020 the defendant caused physical injury to another person while committing a knife point robbery.

The defendant seeks to exclude certain identification testimony from two (2) civilian witnesses on the ground that both single photograph identifications were improper and unduly suggestive.

The People have the burden of going forward to show that the pre-trial identification procedure was not constitutionally impermissible. The defendant, however, bears the burden of establishing by a preponderance of the evidence that the procedure was impermissible.

If the procedure is shown to be impermissible, the People have the burden of showing by clear and convincing evidence that the prospective in court identification testimony, rather than stemming from the unfair pre-trial procedure or confrontation, has an independent source.

The People must preliminarily demonstrate that the arrest of the defendant was based upon reasonable and probable cause.

By decision of the Hon. Anne E. Minihan dated March 30, 2021, pre-trial *Dunaway, Wade, Mapp* and *Sandoval/Ventimiglia* hearings were ordered. On September 20, 2021, a combined hearing was held to address the *Wade, Dunaway, and Mapp* issues. The *Sandoval/Ventimiglia* hearing was adjourned until November 5, 2021 immediately before jury selection.

At the hearing, the People called as witnesses Greenburgh Police Department Detective Foster Shaw, Detective Ayana Albano and Police Officer Thomas Nee. 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 exhibits included a variety of photographs. This Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

On November 18, 2020 at about 9:00 P.M., Detective Foster Shaw of the Greenburgh Police Department responded to the scene of a reported car jacking and stabbing at a parking lot on Tarrytown Road in that jurisdiction. At the scene, Detective Shaw learned that before the victim, Keith Rodgers, was transported to the Westchester County Medical Center (WCMC), he informed first responders that he knew his assailant by the name "Prince" and that an amount of cash, a cell phone and a rented Honda vehicle had been taken from him.

Armed with the name "Prince," Detective Shaw checked several law enforcement data bases including the White Plains Police Department, an adjoining jurisdiction. White Plains Police Department Detective Mark McClain informed him that one Prince Rogers was known to that department and had a last known address not far from the crime scene. Detective McCain digitally sent a photograph of Prince Rogers to Detective Shaw along with the address of 4 Harmon Street, White Plains, New York.

At the WCMC, the detective spoke with the victim while being treated for a chest stab wound in the Emergency Room. There, the victim confirmed that he knew his attacker by the name "Prince," that he'd known "Prince" for over twenty (20) years, had met with him at least a hundred (100) times during that period, that they were from the same neighborhood in Yonkers, had mutual friends, and spent time in jail together. Keith Rodgers added that he and "Prince" had spent at least three (3) minutes together inside the Honda before the robbery occurred. Keith Rodgers stated he never learned the suspect's last name over that time span.

At the WCMC, Detective Shaw showed the single photograph of the defendant he'd received from White Plains Police Department to Keith Rodgers who identified him as his attacker.

White Plains Police Department officers began a canvas of the area around 4 Harmon Street during the night of November 18th. Within two (2) hours of the crime, Police Officer Thomas Ness and his partner located the Enterprise Rental car that the victim had been operating at the time of the robbery. This Honda vehicle was parked on a street close to the defendant's residence.

Greenburgh detectives went to the Harmon Street address supplied by the White Plains Police Department but were unable to locate the defendant. Based on information obtained via a Ping order for a phone the police believed to be used by the defendant, the officers checked an adjoining residence at 29 Battle Avenue. There, a woman, Mariada Berrios, answered a side door and was shown a photo of the defendant whom she identified as "Prince," an upstairs resident. The defendant was located on the third floor and taken into custody.

During the daylight hours on November 19, 2020, Greenburgh police searched the area around Harmon Street and Battle Avenue with the aid of a property sniffing dog. They were able to locate a switch blade knife on the ground behind a small fence on private property several blocks from the defendant's residence. Two (2) cell phones were also recovered behind some bushes at an address near 29 Battle Avenue while a search of local sewers yielded car keys which were matched to the Honda rental car mentioned earlier.

CONCLUSIONS OF LAW

Wade Issue:

While single photo identifications are generally frowned upon by courts and often deemed unduly suggestive, however, in certain cases as here, when the parties are so familiar with each other, the identification can be said to be confirmatory and impervious to undue

suggestibility. [See *People v. Rodriguez*, 79 NY2d 445]. In such instances, the prosecution is not required to call the identifying witness but may instead establish the prior knowledge through a police officer. [See *People v. Espinal*, 262 AD2d 245].

The alleged victim in the instant case claims to have known the defendant for many years, lived at one time in the same neighborhood, served jail time together and had last seen the defendant two (2) weeks before the crime which itself consisted of a three (3) minute face to face encounter.

Given the facts of this case, including but not limited to, the lengthy periodic interaction between the parties over a number of years, the two (2) week span between their most recent encounter and the crime, and the three (3) minute face to face confrontation inside the rental car, the Court finds that the People have met their burden of proof to demonstrate that the identification was merely confirmatory. [See *People v. Coleman*, 73 AD3d 1200].

As the defendant concedes, the police showed the defendant's photo to Ms. Berrios at the 29 Battle Avenue address merely in an effort to locate him. It was not an attempt to confirm the defendant's identity as the person who committed the crime and, thus, is not subject to suppression. [See *People v. Collins*, 60 NY2d 214].

Mapp Issue:

At the conclusion of the hearing, the defendant acknowledged a lack of standing to contest the admissibility of the knife, car, phones and keys recovered by the police and the Court credits the People's position that these items constitute abandoned property. [See *People v. Burkett*, 98 AD3d 746].


Dunaway Issue:

It is a basic premise of criminal law that information provided by an identified citizen accusing another of a crime is legally sufficient to provide the police with probable cause for an arrest. [See *People v. Singh*, 285 AD2d 563 and *People v. Sanders*, 239 AD2d 528]. The Court finds, based upon the totality of circumstances in this case, that there was abundant probable cause to arrest the defendant and that exigent circumstances existed to permit an arrest without a warrant. Those factors included among others, the seriousness of the offense, its violent nature, the likelihood of the suspect's flight, the potential that the defendant was armed, and the eventual peacefulness of the entry into the defendant's residence. [See *People v. McBride*, 14 NY3d 440]. The existence of a Ping order to assist in locating the defendant via his phone is reasonable and justified given the exigent circumstances of this case.

The parties are directed to appear for jury selection on November 5, 2021.

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

Dated: White Plains, New York
September 22, 2021


ROBERT A. NEARY
SUPREME COURT JUSTICE

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People v. Prince Rogers
Indictment No. 20-00570-01

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