

People v Sanchez

2022 NY Slip Op 34644(U)

May 26, 2022

Supreme Court, Westchester County

Docket Number: Indictment No. 20-0265

Judge: George E. Fufidio

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SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

FILED

-against-

MAY 26 2022

DECISION & ORDER
Indictment No. 20-0265

LUIS SANCHEZ,

**TIMOTHY C. IDOM
COUNTY CLERK
COUNTY OF WESTCHESTER**

Defendant.

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FUFIDIO, J.

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

An indictment has been filed against the defendant, Luis Sanchez, accusing him of the Class A felony of Attempted Murder in the First Degree (Penal Law §110/125.27(1)(a)(vii); three counts of Assault in the First Degree (Penal Law §120.10(1)(4); Robbery in the First Degree (Penal Law §160.15(1); two counts of Attempted Burglary in the First Degree (Penal Law §110/140.30(3)(2); two counts of Criminal Possession of a Weapon in the Second Degree (Penal Law §265.03(3)); and Criminal Possession of a Weapon in the Third Degree (Penal Law §265.02(1)).

On October 7, 2020, the defendant was arraigned on the indictment and pled not guilty. On January 8, 2020, a decision and order was filed by the Honorable David S. Zuckerman, A.J.S.C., which ordered pretrial *Wade*, *Mapp* and *Huntley* hearings. On April 27, 2022, this Court conducted those pretrial hearings.

The defendant alleged that his arrest was not based on probable cause which required the Court to suppress any identification evidence, physical evidence or statements made by him. Additionally, the defendant alleged that the noticed identifications were the product of unduly suggestive procedures conducted by law enforcement which would taint any in-court identification. The defendant claims that his statements were involuntarily made.

The People called four witnesses (Detective Adam Walencik, Detective Dean Renzi, Detective Sean Manning and Police Officer William Connors) who testified and entered exhibits into evidence. The Court gives full credence to the testimony of the People's witnesses. The defense presented no testimony or evidence at the hearings.

The Court makes the following findings of fact:

On April 11, 2020 at approximately 2:15 a.m., Detective Dean Renzi, assigned to the Yonkers Police Department's Major Case Squad, responded to 43 Western Avenue, in the City of Yonkers, on a report of gunshots. Detective Renzi was the lead detective on this investigation and as he arrived at the location the male victim was being placed into an ambulance. Detective Renzi spoke to patrol officers who were at the scene and he learned that the incident had occurred in the rear of the dwelling on the wooden deck. Detective Renzi observed blood on the rear deck and steps leading down to the backyard. A large knife was found on a table on the deck. Renzi learned that a male suspect had approached the rear door which he began banging on. The suspect was yelling for a female and he was armed with a large knife. The male victim (Fabio Gomez) told the suspect that the female was not there and that he had a gun. The victim went outside to speak with the suspect, there was an altercation and during the struggle the victim was shot. The suspect left the scene with the victim's gun.

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COURT

Surveillance video was obtained from the security cameras at 43 Western Avenue. The victim's wife (Aleyda Gomez) was interviewed and stated the large knife at the scene was not her knife. The detectives viewed the surveillance video and observed the male suspect pacing outside the residence, he opens the front gate and walks down the alley, he opens the back gate and enters the yard. The suspect walks up the stairs to the rear deck where he begins yelling. The victim exits the residence with his gun, the suspect lunges at the victim and a struggle ensues between the two men. The suspect gains control of the gun and the gun fires. The suspect goes back up the stairs to the deck and retrieves his cell phone.

Detective Renzi took still photographs of the suspect from the surveillance video and sent the photographs out in a flyer (People's Exhibit 8). Renzi was contacted by Detective Villanueva of the Yonkers Police Department regarding the flyer. Villanueva informed Renzi that he believed the suspect in the photographs was the defendant, Luis Sanchez, with whom he was familiar. Detective Renzi complied a photographic array which included the defendant's photo (People's Exhibit 1). Renzi constructed the array with other photos based on the same characteristics as the defendant. The array consisted of six male Hispanics with similar hairstyles, facial hair and complexions. The photographs were all in color with similar backgrounds. All of the photos were basically headshots of the individuals.

Detective Renzi requested that Detective Adam Walencik be assigned the photographic identification procedure. Detective Walencik was not involved in the investigation, he was not aware of the defendant being the suspect, and he had never met the defendant before. Detective Renzi provided Walencik with a folder which contained three sheets including the photo array (People's Exhibit 1). Walencik entered the interview room where he met with Aleyda Gomez. He was in the room alone with Aleyda Gomez and read her the instruction sheet which she initialed and dated. Walencik then showed her the array and Gomez identified the defendant. Ms. Gomez circled the defendant's picture, signed her name, and dated it.

After receiving the positive identification of the defendant, Detective Renzi obtained a search warrant for the defendant's last known address. The police executed the search warrant at 88 Saratoga Avenue, Apartment 4, in the City of Yonkers. This location is a five to seven minute walk from 43 Western Avenue. The search resulted in the seizure of a .45 caliber shell casing and a gray hooded sweatshirt with what appeared to be blood stains. The defendant was arrested in Apartment 1 at 88 Saratoga Avenue. The defendant's cellphone was seized incident to his arrest.

The defendant was transported back to Yonkers Police Headquarters where he was placed in an interview room. Detective Renzi entered the interview room where the defendant had been placed. The defendant agreed to be interviewed and Detective Renzi informed him of his so-called *Miranda* rights from a printed card (People's Exhibit 9). Detective Renzi read verbatim from the printed card, the defendant stated that he understood his rights and signed the form and dated it. The entire interview was videotaped with the defendant's knowledge. The interaction between Detective Renzi and the defendant was calm, conversational and non-adversarial. The defendant was uncuffed, he was given water, provided with cigarettes and given his cellphone to make personal calls. Detective Renzi made no promises nor did he threaten the defendant. Detective Renzi never raised his voice nor was his weapon ever displayed. The videotape recording ran continuously for the entire interview process which last for approximately one hour and one half. There were several pauses in the interview to allow the defendant to call his girlfriend where the defendant was left alone in the interview room. Detective Renzi never re-read the defendant his rights during the course of the interview.

Police Officer William Connors testified that he transported the defendant after his arrest to Yonkers Police Headquarters on April 11, 2020. While at headquarters, Connors guarded the defendant who made oral statements which were not the result of police questioning. Officer Connors wrote down

those oral statements while at headquarters at that time. Later, Officer Connors was requested to transport the defendant to a park in the vicinity of Caryl Avenue in the City of Yonkers. While sitting in the patrol car, the defendant again made oral statements which were not the result of police questioning. Officer Connors again made written notations concerning those oral statements. Officer Connor testified that he never threatened the defendant at any time.

On May 8, 2020, Detective Renzi with Detective Geiss went to interview the victim, Fabio Gomez, at the Veterans Hospital in the Bronx. The victim was shown the surveillance video that the police had obtained from the victim's residence. The victim identified himself in the video and his assailant. Mr. Gomez was never shown the photo array in this case nor was Detective Renzi ever involved in any type of identification procedure with the victim prior to the victim's appearance before the grand jury.

On July 24, 2020, Detective Renzi appeared before the grand jury and identified Luis Sanchez in the interview videotape. Renzi had reviewed the video before his testimony in the District Attorney's Office that morning.

Detective Sean Manning testified that he is a member of the Yonkers Police Department's Gang Unit. His assignment at the Gang Unit is to monitor social media seven days a week. Manning periodically monitors Snapchat, Facebook and Instagram for possible evidence of street gang activity. On April 11, 2020, while monitoring social media, Detective Manning received a work email which contained the flyer compiled by Detective Renzi (People's Exhibit 8). The detective recognized the flyer photographs to be of the defendant. Manning knew the defendant well from past experience. Manning monitored the defendant's social media accounts in the past. He accessed the defendant's Snapchat account that date and copied a video which the defendant had posted to the platform. Detective Manning observed the defendant wearing a gray sweatshirt and brandishing a large knife. Manning made a copy of the video and informed Detective Renzi of this information before the defendant's arrest later that day. Manning testified before the grand jury on July 24, 2020. He identified the defendant from the Snapchat video before the grand jury and he had reviewed that video earlier that day in the District Attorney's Office.

I make the following conclusions of law:

ARREST AND SEARCH INCIDENT TO ARREST:

The police may arrest a person if they have probable cause to believe that the person has committed a crime (*People v Carrasquillo*, 54 NY2d 248 [1981]). Probable cause has been interpreted to mean, "information which would lead a reasonable person who possesses the same expertise as the officer to conclude, under the circumstances, that a crime is being or was committed (*People v McRay*, 51 NY2d 594 [1980]) or information that makes it appear that it is more likely than not that a crime has taken place (*People v Vandover*, 20 NY3d 235 [2012]). Probable cause is also found when an identified citizen provides information that another person has committed a crime (*People v Griffin*, 15 AD3d 502 [2nd Dept. 205]). Once the police have probable cause to arrest a suspect, upon his arrest, the police are authorized to seize items in the suspect's possession as incident to his arrest (*People v Johnson*, 178 AD2d 490 [2nd Dept. 1991]).

Here, the police interviewed the victim's wife who told them what happened at their house. In addition, the police were able to find surveillance video which showed the defendant pacing outside of the victim's home; go through two gates at the side of the house and then into the backyard, where he is seen climbing the stairs to the deck where he is seen yelling. Further, in that video they are able to observe the victim come out of the house with a gun and then the ensuing struggle over the gun between

the victim and Defendant. The video also captures when the gun discharges and shoots the victim in the stomach. They then see the Defendant go back up the stairs to get his dropped cell phone.

Using screen shots from the surveillance video, the police then created "wanted" fliers for intradepartmental distribution. A Yonkers police officer who saw the flier contacted the detective in charge of the investigation and reported that he thought that the person depicted in the flier was the Defendant. In addition, Yonkers Detective Sean Manning saw the flier and recognized the Defendant because he was familiar with him from previous police encounters and from monitoring his social media presence. The Detective was able to go on to the Defendant's Snap Chat profile where he found a picture of the Defendant dressed similarly to how he was dressed in the crime surveillance photographs as well as brandishing a large knife similar to the one he is alleged to have wielded the night of this incident and which he abandoned at the crime scene.

The police then conducted a photo array identification with the victim's wife who positively identified the Defendant as the perpetrator. Accordingly, there was probable cause to arrest the defendant. Upon his arrest the police also lawfully seized the cell phone he had in his possession as incident to a lawful arrest.

STATEMENTS:

Officer Connors transported the Defendant from where he was arrested to the Yonkers Police Headquarters. While Officer Connors was guarding the Defendant there, the Defendant made statements to him. Later, Officer Connors was asked to take the Defendant to a park near Caryl Avenue in Yonkers. While they were waiting in the patrol car the Defendant, again, made some statements to Officer Connors. Officer Connors memorialized both sets of statements to writing. The Court finds that although the Defendant was in custody at the time, both sets of statements were genuinely made and spontaneously volunteered and not the result of police questioning or any other inducement, provocation, or encouragement (*People v Rogers*, 48 NY2d 167 [1979]) and thus the Defendant was not required to have been read his *Miranda* rights (*Rhode Island v Innis*, 446 US 291 [1980]).

In addition to the statements made to Officer Connors, the Defendant also made statements to Detective Renzi in a police interview room and the interview was video and audio recorded with the Defendant's knowledge. Prior to being questioned, the Defendant was given his *Miranda* warnings from a *Miranda* warnings card which was signed and dated by the Defendant acknowledging that he understood his rights. The Court finds that he understood the questions that were asked of him from the *Miranda* card and that he validly waived his rights in order to talk with the police. The Defendant was given an ample opportunity to explain his version of events. Generally, voluntariness is found in the absence of coercion and the burden is on the People to prove this beyond a reasonable doubt (*People v Thomas*, 22 NY3d 629 [2014]). The Defendant was in custody being interviewed for an hour and a half. Taking into account the Defendant's age, physical state, mental state, the length of the interview and the conditions under which the statements were given, being unrestrained inside the room, the fact that the Defendant was given water to drink and cigarettes to smoke, Detective Renzi's calm demeanor, the lack of threats or inducements and that he was given his cellphone to make personal phone calls, all lead the Court to find that the statements made were entirely voluntary and not coerced by any means whatsoever (*People v Sakadinsky*, 239 AD2d 443 [2nd Dept. 1997], *People v Anderson*, 42 NY2d 35 [1977]). Additionally, the Court does not find that the breaks in the hour and a half while the Defendant was being interviewed were of significant duration so as to warrant Detective Renzi re-*Mirandizing* the Defendant (*People v McMillon*, 31 AD3d 136 [2nd Dept. 2006]).

IDENTIFICATIONS:

The Court finds that the identification procedure conducted by Detective Walencik with the victim's wife, Aleyda Gomez, was not unduly suggestive. Det. Walencik did not know any details of the case, nor did he know the defendant. He did not have any participation in the case up until the point that he was called in to conduct the photographic array procedure with the witness. He did not compile the photographic array and he read the witness the appropriate instructions for her to consider when looking at the photographs. The witness indicated she understood the instructions by initialing the form and she signed and dated the form when she had made her selection after viewing the array. The array itself depicted similar looking subjects against a similar looking nondescript gray backgrounds. Each of the subjects pictures depicted in the array display each subject as being approximately the same size. While there is no requirement that the defendant in an identification be surrounded by people identical in appearance (*People v Chipp*, 75 NY2d 327 [1990]), the subjects depicted in the photo array were sufficiently similar to each other and to the defendant that the likelihood that the defendant would be singled out based on particular characteristics is slim (*People v Wright*, 297 AD2d 391 [2nd Dept. 2002]) and any variation in the depicted subject's appearances is not so significant as to render the identification impermissibly suggestive (*People v Ragunath* 24 AD3d 472 [2nd Dept. 2005]). Accordingly, this witness may identify the Defendant in court as the perpetrator.

Next, concerning the identifications made by the victim, Fabio Gomez, Detective Renzi and Detective Manning the Court finds that these were not identification procedures as contemplated by CPL 710.30 and in no way unduly suggestive.

With respect to the identification made by Detective Renzi before the Grand Jury and while he was testifying in front of the Grand Jury, the Court finds that this was simply a confirmatory identification made of the Defendant by the Detective who already knew his identity based upon the investigation he conducted and the interview he conducted with the Defendant (*People v Gissendanner*, 48 NY2d 543 [1979]).

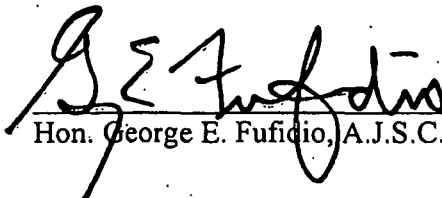
Regarding the identification made by Detective Manning, that too was simply a confirmatory identification of someone that he knew from prior encounters in his experience as a police officer in Yonkers (*Gissendanner*).

Should the proper foundation be laid, these Detectives will be permitted to give their opinion that the Defendant is the same person depicted in the video recording and still shots derived therefrom that they viewed (*People v Russell*, 165 AD2d 327 [1991]). However, they will not be permitted to identify the Defendant in court as the person who committed the crime; only that it is their opinion that he is the person depicted in the video recordings.

Regarding the identification made by the victim, he simply confirmed events depicted in the video in which he and the Defendant were both participants and where, "there was nothing resembling a selection process" (*People v Gee*, 99 NY2d 158 [2002]). As such, he will be permitted to testify that he recognizes himself in the video, but not that the Defendant was the perpetrator.

Accordingly, the defendant's motions to suppress his statements, in-court identifications, and physical evidence are denied.

Dated: White Plains, New York
May 26, 2022



Hon. George E. Fufidio, A.J.S.C.

TO:

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