

People v Williams

2023 NY Slip Op 34686(U)

May 19, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 22-70234-001

Judge: Robert A. Neary

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MAY 19 2023
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

**FILED
AND
ENTERED
ON 5-19-2023
WESTCHESTER
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

ERIC WILLIAMS,

Ind. No. 22-70234-001

Defendant.

-----X
NEARY, J.

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

The defendant has been indicted for the crimes of Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree. It is alleged that on or about June 20, 2021, the defendant did shoot and killed Jabree West on Bronx River Road in Yonkers, New York.

The defendant claiming to be aggrieved by the improper or unlawful acquisition of evidence has moved to suppress statements allegedly made by him orally on December 19, 2021 at 7:23 P.M. and 12:15 A.M. the following morning in writing on the ground that the statements were involuntary and made without benefit of the *Miranda* warnings.

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

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

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

The People must establish the voluntariness of the statements attributed to the defendant beyond a reasonable doubt before they are admissible at trial.

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

By decision of the Hon. Robert Prisco dated June 9, 2022, pre-trial *Huntley, Dunaway, Wade* and *Sandoval/Ventimiglia* hearings were ordered. On May 16 and 17, 2023, a combined hearing was held to address the *Huntley, Wade* and *Dunaway* issues. The

Sandoval/Ventimiglia hearing was adjourned until prior to trial. This decision also addresses the People's *Molineux* application.

At the hearing, the People called as a witness Yonkers Police Department Detective Jonathan Blake. The Court finds the testimony of the People's witness to be candid, plausible and fully credible. The defense presented no witnesses and offered no evidence. The People's exhibits included the video and written statements of the defendant and several photographs. This Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACTS

Shortly after 5:00 A.M. on June 20, 2021, Yonkers police officers responded to reports of shots fired near 463 Bronx River Road in that city. At that location, they discovered the body of Jabree West who suffered a gunshot wound to the head. At the scene, detectives recovered the victim's cell phone which upon examination revealed numerous pictures and video of the victim with the distinctly clad defendant in the hours preceding the shooting. A canvass of the neighborhood residences yielded surveillance video depicting an individual resembling the defendant appearing to "rack" an automatic handgun near the scene of the crime shortly before the incident was reported to police.

By using photographs and other data from the victim's phone, investigators were able to trace his movements throughout June 20th as he and the defendant traveled to various locations in Manhattan, the Bronx and Westchester. The victim had "tagged" or identified the defendant in photos on his phone with the term "gululag83n" which connected with the

defendant's g-mail social media account. Police also found a receipt in the victim's backpack for a cell phone listed to the defendant.

A court order was obtained enabling detectives to review cell site data for both the victim's and the defendant's cell phones. An analysis of this data demonstrated that they both appeared to travel together from Delaware to New York in the period just prior to the homicide. Cell site data also indicated that both phones were present near the crime scene when the shooting was reported.

Police obtained a "Ping" court order for the defendant's phone which provided information about its location in real time. On December 19, 2021, officers were notified that the defendant's phone was at a residence on Staten Island, New York. With the assistance of New York Police Department personnel, the defendant was taken into custody that day and transported to the 120th Precinct where two (2) hours later he was questioned by Yonkers Detective Jonathan Blake and his partner, Detective Sean Concannon.

The questioning lasted approximately five (5) hours and was recorded in its entirety on audio and videotape.

CONCLUSIONS OF LAW

Dunaway Issue

New York Courts have recognized that an arrest need not be supported by information and knowledge that at the time points directly to a defendant's guilt beyond a reasonable doubt and excludes all possibility of innocence. Rather, probable cause rests on

probabilities, not certainty. [See *People v. Bigelow*, 66 NY2d 417]. It is the synthesis of all information gleaned by the investigator from any number of sources that link the defendant to the alleged crime. Police officers may draw inferences based upon their own training and experience to determine if probable cause exists.

Based upon the totality of circumstances in this case and viewing the evidence in the light most favorable to the People, the Court finds that police had probable cause to detain and arrest the defendant. This determination is founded in part upon cell phone photographs and cell site tracking that place the victim and defendant in each other's company throughout the day of the homicide up to and including the time of the crime. Paired with this evidence is surveillance video that not only depicts the defendant holding a weapon, but includes the distinctive sound of the weapon being "racked" and readied to fire. While the victim's phone was located at the scene, the defendant's phone was traced leaving the area shortly after the shooting.

Based upon the foregoing facts, police had abundant probable cause to support the arrest of the defendant on December 19, 2021.

Huntley Issue

The questioning of the defendant, while lengthy, was never aggressive or overbearing. The defendant participated willingly throughout the session. At the outset his remarks ranged from mundane to, at times, philosophical. Once the detectives directed their

questions to the date of the crime, he became introspective and remorseful, at times shedding tears.

The video and audio evidence offered into evidence at this hearing (People's Exhibit 1) clearly shows the defendant being advised appropriately of his *Miranda* rights; acknowledging he understood them; and after signing the warning card (People's Exhibit 2), agreeing to speak with detectives.

The record is devoid of any suggestion that the defendant unequivocally invoked any of his rights or is there any evidence that he was threatened, coerced or induced in any fashion that would overcome his ability to decide whether or not he wished to submit to questioning.

The defendant was uncuffed throughout the interview and allowed to stretch and move about the room. Food and drink were provided.

At the end of the session, the defendant was given an opportunity to write out a statement explaining his feelings and regrets (People's Exhibit 3).

Based on the foregoing analysis, the Court finds the People have met their burden of proving beyond a reasonable doubt that the defendant's videotaped and written statements were given knowingly, freely and voluntarily and, thus, are admissible at trial.

Wade Issue

After reviewing the Grand Jury minutes (People's Exhibit 17), the Court finds that both Detective Blake and Detective Concannon identified single photographs of the

defendant as the individual they interviewed and opined that he was the same person depicted in several photos and videos contained on the deceased's cell phone and recovered from surveillance cameras near the crime scene.

While generally, single photo identifications can be said to be *per se* unduly suggestive and are frowned upon, there are exceptions. [See *People v. Carmona*, 185 AD3d 600 and *People v. Rodriguez*, 79 NY2d 445].

Given the extensive amount of time these officers spent speaking face to face with the defendant, the Court concludes there is little or no risk the officers would identify the wrong individual. Under the circumstances of this case, the Court concludes that the above two (2) identifications are clearly confirmatory and impervious to any improper suggestibility.

Molineux Application

The People, pursuant to CPL Section 245.20(3) and the *Molineux* line of cases are seeking to introduce on their direct case evidence that, in substance, the defendant removed the victim's house keys from his pants pocket at or about the time of the crime, returned to Delaware where he burglarized the victim's residence removing two (2) safes in the process. In support of their application, the People propose to establish, among other things:

- (a) The defendant was familiar with where the victim lived in Delaware.
- (b) The defendant's DNA was found in the victim's pants pocket.
- (c) No keys were found by police among the victim's possessions.
- (d) There were no signs of forced entry into the Delaware location.

- (e) In Delaware, one day after the homicide, a witness observed in a car driven by the defendant, an object covered under a towel consistent in shape with a safe.
- (f) Cell site data places the defendant's phone in the vicinity of the victim's Delaware home on the day after the homicide.

The People contend the above evidence tends to establish motive and identity relative to the instant crimes in Westchester. Defense counsel argues that each of the above-mentioned factors when considered alone are subject to an explanation that does not inculpate the defendant. Counsel contends among other things:

- (a) There are a variety of innocent explanations concerning how defendant's DNA could have been transferred into the victim's pocket.
- (b) The defendant was never charged with the Delaware burglary or theft of the keys in Westchester.
- (c) That cell site data is not precise and depends on location of nearest tower.
- (d) The safe had previously been broken into and victim's roommate had a key.


In deciding *Molineux* applications, the Court must engage in a case specific balancing of the probative value versus the danger or unfair prejudice. When prior bad acts are offered to establish identity there must be clear and convincing evidence linking the defendant to those "bad acts." [See *People v. Robinson*, 68 NY2d 541].

Where evidence of prior bad acts has a bearing on a material aspect of the People's case other than to show a defendant's general propensity toward criminality, the courts have consistently admitted prior criminal conduct and bad acts despite the potential for prejudice to the defendant. [See *People v. McKinney*, 24 NY2d 180, also *People v. Alvino*, 71 NY2d 233].

Given the facts of this case, the Court finds the People have met their burden of showing clear and convincing evidence that proffered evidence, concerning the Delaware burglary, when considered collectively, is probative on the issue of identification and outweighs any prejudice to the defendant particularly in light of the limiting instruction that will be impressed upon the jury. On the issue of motive, the Court makes a similar determination and ruling.

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

Dated: White Plains, New York
May 19, 2023


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SUPREME COURT JUSTICE

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