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ON 6/26 2007
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
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DECISION AFTER HEARING

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No.: 06-1007-01

- against -

FRED RICHARDSON AND OMAR WASHINGTON,,

Defendants.
----------x

FILED
JUN 26 2007
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

ZAMBELLI, J.

The defendant has been indicted for murder in the second degree (two counts), robbery in the first degree, assault in the second degree, criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, and criminal possession of a weapon in the fourth degree. By decision and order dated December 13, 2006, the Honorable Lester B. Adler ordered a Huntley hearing and a Wade hearing. The hearings were held on May 11, 14, 16, 17, 2007. The following witnesses testified for the People: Detective Edward Rutledge, Detective Brian Robbins, Detective Michael Maffei, Detective David Napolitani, Detective Bryan Hembury, Detective James McCabe, Police

Officer Richard Hurley, Detective Eric Fischer, and Deputy District Attorney Patricia Murphy., The defendant called the following witnesses: Sheeangela Morgan Roberts, Serena Hendrick, the defendant Fred Richardson, and P. Christopher Contronei, Esq.

FINDING OF FACT

The credible testimony adduced at the hearings on this case established that on May 22, 2006, Kevin Chambliss was shot and killed in the vicinity of 70 Ferris Avenue, White Plains, New York. The incident was witnessed by Lamont Atkinson, who called 911 to report the crime.

On May 23, 2006, Detective Maffei located a witness to the shooting, Lamont Atkinson, in Gardella Park in White Plains. Mr. Atkinson voluntarily accompanied the detective to the White Plains Police Department. Mr. Atkinson described the shooter as a black male wearing a white jacket, a red and white hat inscribed with the words "New York", a red bandana and blue jeans. At about 6:30 pm, he was shown a six-person photo-array prepared by the Yonkers Police Department (People's Exhibit 4). He positively identified the defendant Fred Richardson as the shooter. In the photo-array, the defendant was the only person with inch-long, twist-style braids in his hair. At approximately 7:04 pm, Mr. Atkinson gave a written statement to the police describing the shooting, and the circumstances surrounding his viewing of the photo-array.

On May 24, 2006, at about 5:30 am, the White Plains Police Department with the

assistance of the Yonkers Police Department executed a search warrant for 18 Clark Street, Yonkers, New York. The police were looking for a weapon and clothing in connection with the above-referenced shooting. After knocking and announcing their presence, the police used a battering ram to gain entrance to the front door of the home. A "Flash Bang" grenade was then tossed into the premises. It caused a loud explosion and spread smoke throughout the house. The Yonkers Police Department Emergency Services Unit entered the house first. The defendant and his girlfriend were found in a second floor bedroom. They were instructed to get on the floor and raise their arms above their heads. The defendant was handcuffed and brought downstairs to the living room where he stayed along with his mother and other relatives while the police conducted the search.

According to the defendant's mother, Sheeangela Morgan Roberts, and his former girlfriend, Serena Hendrick, a police officer compared the defendant to a photograph and shouted "We got him!" The mother then instructed the defendant, who was 19 years old at the time of his arrest, not to speak to the police until an attorney was present. She told him, "Freddy, repeat after me. I do not wish to make any statements or be questioned until my lawyer is present." According to the defendant, his former girlfriend, and his mother, the defendant then requested a lawyer for the first time by repeating his mother's words. However, none of the police officers present during the execution of the warrant heard the defendant invoke his right to counsel.

At about 8 am, the defendant was transported to the White Plain Police Department by Detective Napolitani. According to Detective Napolitani, he did not speak to the defendant during the 15 minute trip from Yonkers to White Plains. When the defendant arrived at the White Plains Police Department, he was seated in an interview room and handcuffed to a bar on the wall. At about 9:30 am, Detective Rutledge and his partner Detective Hembury were told that the defendant was in the interview room. The defendant was advised of his Miranda rights from a preprinted card, and he indicated that he understood his rights and agreed to give a statement. The defendant signed the card and Detective Rutledge added the date (May 24, 2006) and time (9:42 pm) to it (People's Exhibit 2).

According to the defendant, he understood his Miranda rights. However, after he requested a lawyer, the detectives told him that he could not have one. He also claimed that a detective told him, "We just spoke to the DA, the Judge and we got you one to three. We know you don't want to go north for the rest of your life." That is when he agreed to make a statement. He claimed that he only told the police that he closed his eyes and shot at the victim's legs." He then testified that the detectives fabricated all of the other details contained in his written statement. However, during cross-examination, the defendant contradicted his direct testimony. For example, he admitted that he told the detectives that he saw his cousin, codefendant Omar Washington, fight with the victim, Omar Washington had called to tell him that the victim had died. and that his girlfriend was sleeping over his home on the morning the police executed the search warrant.

According to the detectives, the defendant initially claimed that he had never been to White Plains and did not know anyone from White Plains. He denied having any knowledge of the shooting. After the detectives mentioned certain details that demonstrated that they knew of the defendant's involvement, the defendant broke down and started crying uncontrollably, stating that he would tell the detectives everything they wanted to know. Detective Rutledge placed his arm on the defendant's shoulder. He told the defendant that everyone makes mistakes and it was not the end of the world.

The defendant regained his composure, and after he was given a soda, he made an oral statement. The defendant subsequently agreed to place his statement in writing. He was then taken to a detective's office where a computer was located. He was not handcuffed. After being read his Miranda rights for a second time, he coherently repeated his statement, and he was cooperative throughout the process. Detective Rutledge typed out the statement as the defendant spoke. The defendant initialed each paragraph of the written statement, and signed the statement's last page. The time noted on the statement is 12:10 pm. According to Detective Hembury, the detectives finished taking down the statement at approximately 1:50 pm. The defendant refused the food he was offered during the interview. While the statement was being taken, no promises were made to him and he did not ask for an attorney. During the interview process, the defendant, who considers himself a rap artist, wrote a what he called a "rhyme". He concluded the verses with the phrase "never will I ever be free!!!" (People's Exhibit 45). According to the defendant, this "rhyme" was actually written before his arrest, and the police must have

found it in his home. He claimed that he had recorded himself reciting the "rhyme" prior to his arrest.

Meanwhile, according to the defendant's mother, she began making telephone calls to the office of P. Christopher Contronei, Esq. at about 10 am. Mr. Contronei was assigned to represent the defendant on an unrelated felony gang assault charge. In fact, the defendant had been scheduled to appear at a felony hearing in Yonkers at 2 pm. According to Mr. Contronei, he received a phone call at approximately 9:30 am from the defendant's Aunt, advising him that the defendant had been arrested. He then called the District Attorney's office in Yonkers to advise them that the defendant would not be appearing for the felony hearing. Later, while walking to a 1 pm real estate closing, Mr. Contronei received a call on his cell phone from his receptionist advising him that the defendant's mother was trying to reach him. The receptionist noted on a message pad introduced into evidence that the mother called the law office at 12:37 pm (Defendant's Exhibit B). At about 12:45 pm, Mr. Contronei was able to speak with the mother directly. According to Mr. Contronei, sometime between 12:47 pm and 1 pm he called the White Plains Police Department using his cell phone and spoke to a secretary in the Detective Division. After he was advised that no detectives were available to speak with him, he told the secretary that he represented Fred Richardson and he did not want him questioned. He then requested that a detective return his call. Verizon phone records subpoenaed by the defendant indicate that the earliest Mr. Contronei called the police department phone

number 422-6111 from his cell phone was 2:25 pm.[1]

Mr. Contronei's real estate closing concluded at about 2:30 pm. At 4:38 pm, he called the District Attorney's Office in White Plains and spoke with Deputy District Attorney Patricia Murphy. Ms. Murphy advised Mr. Contronei that all interviews with the defendant had been completed and the police were preparing to place the defendant in a lineup. Mr. Contronei told Ms. Murphy that he tried to call the police several times after 2:25 pm. Ms. Murphy memorialized her conversation with Mr. Contronei on a "While You Were Out" message pad. She wrote, "no further interviews ... 4:38 pm ... Chris Contronei ... w/mother ... >2:25 PM."

At about 5:40 pm, Lamont Atkinson, who had previously picked the defendant out of a photo-array, arrived at the White Plains Police Department to view a lineup containing the defendant. Mr. Atkinson was kept isolated in a separate room while the lineup was prepared. Mr. Contronei participated in the lineup as defendant's counsel. The defendant and the lineup fillers each wore identical white t-shirts. All the subjects in the lineup were seated and the defendant was permitted to choose any position he wanted. Before the lineup took place the defendant changed his hairstyle by removing the braids from his hair. Mr. Atkinson viewed the lineup. He was asked if he recognized any of the subjects as a participant in the shooting. He pointed to the defendant, and identified him as the shooter

[1] By stipulation dated June 21, 2007, the parties agreed that the phone records are accurate and should be admitted into evidence for the Court's consideration. The Court takes judicial notice that the phone number for the White Plains Police Department is 422-6111.

of Kevin Chambliss. A video of the lineup was entered into evidence during the hearings as People's Exhibit 55.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

The defendant's motion to suppress the identifications is denied. With regard to the photo-array shown to Lamont Atkinson, it is settled that there is no requirement that all subjects depicted in a photo-array be identical in appearance; rather, all that is required is that the subjects resemble each other sufficiently so as not to create a substantial likelihood that the defendant will be singled out for identification (see People v. Price, 256 AD2d 596; People v. Font, 223 AD2d 600). In this case, the array was not suggestive. The differences between the hairstyle of defendant and the other subjects, when considered together with the similarity of age, complexion and weight of all the subjects was not sufficient to create a substantial likelihood that the defendant would be singled out for identification (see People v. Chipp, 75 NY2d 327, 336; People v. Callender, 8 AD3d 294). Furthermore, there is no evidence that the police engaged in any conduct which suggested the defendant's picture to Mr. Atkinson.

As to the lineup, since Mr. Atkinson had identified the defendant while viewing a photo-array on the day before the lineup, the lineup identification was merely confirmatory (see People v. Gilbert, 295 AD2d 275). In any event, the Court finds that there was nothing

unduly suggestive about the lineup. Counsel for the defendant participated in the lineup, the defendant chose where he was to be seated, and the lineup subjects all wore white t-shirts. The video of the lineup entered into evidence demonstrates that the lineup procedure was not unduly suggestive.

With regard to the defendant's statements, the Court finds that the People have proven beyond a reasonable doubt that the defendant was advised of his Miranda rights and that he knowingly, voluntarily and intelligently waived his rights (see Miranda v. Arizona, 384 US 436). While the defendant did get upset after the police advised him that they knew of his involvement with the shooting, the defendant was given an opportunity to regain his composure before the detectives continued the interview, and the remainder of the interview was not conducted in a coercive manner. Moreover, the defendant was offered food and drink during the interview process.

The testimony of the defendant, his former girlfriend and his mother that the defendant invoked his right to counsel at his home prior to being taken to the White Plains Police Department is belied by the record. None of the police officers who were present during the execution of the search warrant heard the defendant ask for counsel. Additionally, although the defendant testified that he repeatedly requested a lawyer after being read his Miranda rights, his testimony is not to be believed because he repeatedly contradicted himself and at the conclusion of the hearings he admitted through his counsel that his hearing testimony was not entirely truthful. Furthermore, this was not the

defendant's first encounter with the police or the first time he had been instructed regarding his Miranda rights, and he admitted that he understood his Miranda rights at the time they were being read to him by Detective Rutledge.

The defendant's contention that he was tricked into a confession by the promise of lenient sentence lacks merit. The detectives who interrogated the defendant credibly testified that no promises were made during the interview. Furthermore. while he was making his statement, the defendant wrote out a rhyme which stated that he would never be free, suggesting that he understood the seriousness of the crimes for which he was being accused.

The contention of the defendant and his mother that the defendant lacked the intelligence to voluntarily confess to the crime and understand the written statement he signed his name to lacks merit. According to the credible evidence, the defendant coherently repeated the written statement, initialed each paragraph of the statement, and signed the statement's last page. As the defendant's hearing testimony demonstrated, he was capable of reading and understanding the statement. The defendant's school records do not contradict this finding. It appears that the defendant's poor performance in school was primarily the result of his poor attendance record and his inability to pay attention when he did go to class. Significantly, his demeanor while testifying and during the hearings contradicts any suggestion that he is slow witted.

The defendant argues that his written statement should be suppressed because his attorney "entered" the case and thereby triggered his indelible right to counsel before the detectives finished taking the statement (see e.g. People v. Failla, 14 NY2d 178). According to the defendant, Mr. Contronei entered the case on his behalf sometime between 12:47 pm and 1 pm when Mr. Contronei testified that he called the White Plains Police Department from his cell phone and told the secretary in the Detective Division that he wanted all questioning of the defendant to cease. However, Mr. Contronei's recollection of the events of May 24, 2006 is not corroborated by the Verizon records documenting his cell phone usage. According to those records, Mr. Contronei did not call the police, and thus "enter" the case on behalf of the defendant (see People v. Grice, 100 NY2d 318, 324), until 2:25 pm, over ½ hour after the defendant completed his written statement to the police at about 1:50 pm. The phone records also lend credence to Deputy District Attorney Patricia Murphy's testimony that Mr. Contronei told her on May 24, 2006 that he began calling the police after 2:25 pm. Consequently, the hearing evidence does not support the defendant's contention that his statement was elicited from him in violation of his right to counsel.

Accordingly, the motion to suppress is in all respects denied.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
June 25 2007

BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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