

People v Parsley

2012 NY Slip Op 33842(U)

February 21, 2012

Supreme Court, Westchester County

Docket Number: 10-0611

Judge: Barbara G. Zambelli

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CITY OF WESTCHESTER

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FEBRUARY 21, 2012
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No: 10-0611

- against -

CHARLES PARSLEY and KASAUN WHITE,

DECISION AFTER HEARING

Defendants.

-----X

ZAMBELLI, J.

The defendants have been indicted for the crimes of murder in the second degree (two counts), burglary in the first degree, assault in the first degree (three counts), and attempted murder in the second degree, allegedly committed on or about April 21, 2010 in the City of Yonkers.

By decision and order dated September 16, 2010, this Court granted Defendant Parsley's omnibus motion to suppress evidence solely to the extent of ordering Wade, Rodriguez and Huntley hearings. During the hearing herein the People withdrew their statement notice thus obviating the need for a Huntley hearing on Parsley's Motion. This court granted Defendant White's omnibus motion to suppress evidence solely to the extent of ordering Wade, Rodriguez and Huntley hearings as well. The hearing was held on February 15, 2012 and February 16, 2012 wherein Detective Vincent DiDio of the Yonkers Police Department and Denise Enoch gave testimony.

FINDINGS OF FACT

On April 21, 2010, at approximately 8:00 p.m., Detective Didio and Detective Craft responded to the location of 1159 Yonkers Avenue, Apartment 1L on the report of a home invasion, homicide. Detectives Didio and Craft were the lead investigators. At approximately 10:00 p.m., the Detectives viewed the video in the lobby of the building with the building manager during the time period between 7:00 - 7:30 p.m. that night, which was the time period the crime was reported. The video was played during the hearing. The video depicts an individual later identified as Charles Parsley entering the building and going to the rear of the lobby to the left of the elevator. Several minutes later, the victim's family, Rafael Corneille, his wife, Sandra Hackley, and their two children entered the lobby. Their apartment is located on the lobby floor. Shortly thereafter, Charles Parsley walked down the lobby and back to the original location. Within a minute he repeated his walk. Within approximately two minutes, an individual believed to be Kasaun White appeared at the intercom wearing a hat, hoodie, carrying a package. He entered the building and walked in the same direction that Charles Parsley walked. Shortly thereafter, Rafael Corneille dove onto the floor of the lobby and ran out of the building. Charles Parsley ran, then walked out of the lobby followed by Kasaun White who was limping. Two still photos were taken by the Detectives of the two individuals in the video. Rafael Corneille told the Detectives the man who rang his buzzer had a package and a UPS logo on his shirt. A witness saw the two men enter a black Ford pick up truck. A further investigation resulted in the location of the truck in Hempstead, Long Island. On May 10, 2010, the Detectives went to the Nassau County Police Department. Detective Rogan of the third precinct had

recovered a cell phone from the truck and was holding the phone as evidence for the Detectives. The Detectives showed Detective Rogan the still photos Exhibit 253, (wanted for questioning poster), and Exhibit 254, (picture of the individual entering the building with the package). Detective Rogan did not recognize the individuals. Sergeant Daniels was shown the photos and did not recognize them. They were directed to Sergeant Heinemann at the Rockville Centre Police Department because of certain high crime areas in that community. Sergeant Heinemann of the Rockville Center Police Department was told by the Detectives that they were investigating a homicide committed in Yonkers and were trying to identify the individuals in the photos. Sergeant Heinemann did not know the individuals. Sergeant Heinemann called Detective Tim Seward to respond to headquarters. Detective Seward was shown the pictures. Detective Seward immediately identified Charles Parsley, "Charlie Rock." He was familiar with Charles Parsley. Charles Parsley lives in Old Mill Ct. where there is a lot of drug activity. Detective Craft showed Detective Seward Exhibit 254. Detective Seward said it looks like Kasaun White. Parsley and White are close friends. They are both Blood gang members. Detective Seward has had interactions with both of them. There is video surveillance in the area of Old Mill Ct. with a feed directly into the Rockville Centre Police Department. Detective Seward had viewed Charles Parsley on the feed many times. Detective Seward knows Kasaun White from the same area. Parsley and White are always together doing activities together. Detective Seward knows White, White's family and the other individuals with whom White and Parsley hang out in the Mill Ct. area. Detective Seward has known Charles Parsley for 5-6 years. Detective Seward told them Detective Meehan is more familiar with them

because Detective Meehan patrolled the Old Mill Ct. sector watching them grow up. Detective Meehan reported to the police department. Detective Craft identified himself to Detective Meehan as a Yonkers Police Detective and repeated to Detective Meehan that they were investigating a homicide and trying to identify the individuals in the photographs taken off the video at the crime scene. Detective Meehan immediately identified Charles Parsley in Exhibit 253. After being shown Exhibit 254, Detective Meehan said the individual looks like Kasaun White. He told the Detectives that Parsley and White are always together. Detective Meehan interacted with Charles Parsley and Kasaun White. He has know their families and their groups for years. Detective Meehan told them White has a distinctive walk, like a duck. On May 11, 2010, the Yonkers Detectives returned to the Rockville Centre Police Department and showed the video surveillance tape of the lobby to Detective Meehan and Detective Seward. Detective Meehan identified the individual with the package as Kasaun White, it was definitely White's walk. Both Detective Meehan and Detective Seward identified Charles Parsley.

On May 11, 2010, Detective Meehan gave the Detectives a 6 pack photo array on each individual; one with a photo of Charles Parsley and a separate different one with a photo of Kasaun White.

On May 12, 2010, at approximately 7:34 p.m. in the Yonkers Police Department, Anthony DeLuca was shown the photo array in evidence as Exhibit 152. Before being shown the array, it was explained that he was going to be shown photos which may or may not contain someone he recognizes. He was told that if he recognized someone he should point to the person and tell the Detective how he recognizes the person in the photo.

Anthony DeLuca looked at the array for approximately one minute and pointed to the number 6 photo, the photo Charles Parsley stating, "I won't forget that mean face." He was the guy in the deli on April 21, 2010 who asked the guy behind the counter for a black cherry soda. Anthony DeLuca circled the picture, placed his initials on the photo array with a date and time.

On May 12, 2010, Detective Didio contacted Rafael Cornielle and asked him to come to the Yonkers Police Department. Mr. Cornielle was shown a photo array, Exhibit 150. He was first told that he may or may not recognize anyone in the array but if he did recognize someone, he should point to the picture and tell the Detective how he recognized the individual. Mr. Cornielle pointed to Charles Parsley's picture, number 4, and immediately started crying. He told the Detective that was the guy who shot him three times. He circled the picture, placed his initials on the photo array, with a date and time. Mr. Cornielle was shown another photo array, Exhibit 151. After repeating the admonitions the Detective showed Cornielle Exhibit 151. He immediately pointed to the photo of Kasaun White, stating he would never forget the face. He was nose to nose with him. He circled the picture, placed his initials on the array with a date and time.

On May 20, 2010, at approximately 5:00 a.m. members of the Yonkers Police Department, Rockville Centre Police Department, and Nassau County Police Department executed a search warrant for Kasaun White in Apartment 24B, Old Mill Ct., Rockville Centre, New York. Kasaun White was found lying on a bed in the apartment with a contraption on his leg. He was placed under arrest and put in the back of the Yonkers Police Department radio car, lying down because of the mechanism on his leg. At

approximately 6:10 a.m. while enroute to Yonkers, Kasaun White asked where they were going to which the Detective responded Yonkers whereupon Defendant asked Yonkers? Whereupon the Detective answered yes, never heard of Yonkers? To which Defendant responded that he has heard of Yonkers but had never been there a day in his life. They arrived at the Yonkers Detective Division interview room at approximately 6:35 a.m. After obtaining Defendant's pedigree information, Detective Didio started to read from Exhibit 256, Defendant's Miranda rights. Defendant said he knew his rights. The Detective read the first and second rights on the Exhibit and then asked Defendant to read out loud the rest of his rights because the Detective did not have his glasses with him. Defendant read the remaining rights and stated he understood each of the rights read by the Detective and himself. He indicated that he wished to speak to the Detective whereupon he made the statements contained in the sum and substance in the People's statement notice. The interview ended at approximately 8:50 a.m. when Defendant stated he wanted to speak to his lawyer. Defendant had been provided with a blanket and water.

CONCLUSIONS OF LAW

It is settled that there is no requirement that all participants in a photo array be identical in appearance, rather, all that is required is that all participants resemble each other sufficiently so as not to create a substantial likelihood that the defendant will be singled out for identification (see, People v Velez, 222 AD2d 625, lv denied 88 NY2d 887; Matter of Raymond, 178 AD2d 288). In the case at bar, the photo arrays shown to the witnesses did not single out a defendant. Moreover, the police did not engage in any

improper conduct or suggest in any manner that either witness select the photo of a defendant (see e.g., People v Edwards, 199 AD2d 574, 575, lv denied 83 NY2d 804).

With regard to the People's proposed identification of the defendants on Exhibit 255 by Detective Meehan and Detective Seward, the court rendered an opinion from the bench.

With regard to Defendant Kasaun White's statement in the police vehicle following his arrest, the statements were not the product of custodial interrogation. Defendant asked a question. The Detective's answer and follow up question were not about the case and were not designed to elicit an incriminating response. Thus, under the circumstances, although Defendant was in custody the conversation initiated by the Defendant was not the product of interrogation. (see, People v. Burton, 57 AD3d 261)

With regard to the White's pedigree statements, the police are not required to administer Miranda warnings prior to asking pedigree questions (Pennsylvania v Muniz, 496 U.S. 582, 601-602, 100 S.Ct. 2638, 2650, 110 L.Ed.2d 528; see also, United States v McLaughlin, 777 F.2d 388, 391-392; United States v Sims, 719 F.2d 375, 378, cert. denied 465 U.S. 1034, 104 S.Ct. 1304, 79 L.Ed.2d 703).

With regard to the defendant's remaining statements, the statements were made only after defendant had stated he knew his rights, read the rights, and knowingly, voluntarily and intelligently waived his rights (Miranda v Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694).

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
February 21, 2012


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE