

People v Gilbert

2013 NY Slip Op 33649(U)

January 30, 2013

Sup Ct, Wayne County

Docket Number: 12-102B

Judge: Dennis M. Kehoe

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

CHAUNSEY M. GILBERT,

Defendant

DECISION
AND
ORDER

Ind. No. 12-102B

Wayne County District Attorney
Jacqueline McCormick, Esq., Assistant District Attorney
For the People

Tyson Blue, Esq.
For the Defendant

The Defendant Chaunsey M. Gilbert has been charged with one count of Grand Larceny in the Third Degree and one count of Criminal Possession of Stolen Property in the Third Degree, by Indictment Number 12-102.

A Wade hearing was held by the Court to determine whether the show-up identification procedure conducted at the Macedon Police Department on July 13, 2012 was unduly suggestive, and whether the witness's testimony establishes a sufficient independent basis of knowledge to permit him to make an in-court identification of the Defendant

at trial.

The charges arise from an incident which occurred on July 13, 2012 at Walmart on Route 31 in Macedon, New York. At approximately 1:09 A.M. on that date, Monty Harshfield, employed as an Asset Protection Manager at Walmart, observed on the video screen in his office, which is part of the security system, six individuals enter the store in groups of two, one of whom was allegedly the Defendant. The witness observed the Defendant remove items from the shelves and place them in a plastic tote, which was inside a shopping cart. After watching the Defendant's actions for a few minutes by means of the surveillance cameras, Mr. Harshfield left his office and followed the individuals, including the Defendant, through various departments of the store. He observed the Defendant, together with others, remove additional items and place them in the tote. Finally, he watched the Defendant and others leave the store without paying for the merchandise. The witness then went outside and watched the individuals transfer the totes into their vehicles. The three (3) vehicles then left the parking lot. The witness testified that he had a clear unobstructed view of the Defendant on camera, in the store and in the parking lot, with adequate lighting in all locations.

While watching the suspects, Mr. Harshfield telephoned the police and informed them of the theft in progress. Upon the arrival of Officer Earl Lergner, a member of the Macedon Police Department, at the store, the witness advised the officer as to the number of vehicles and the direction in which they were seen driving, and the officer left in pursuit.

As 2:20 A.M., Mr. Harshfield received a telephone call from Officer Lergner advising him that the police had pulled over two (2) vehicles. Officer Lergner asked the witness to come to the police station to identify the occupants. When Mr. Harshfield arrived, he was brought to a holding room where the six suspects were sitting together. All of them were handcuffed. Mr. Harshfield identified the suspects, including the Defendant, as the individuals he had seen in Walmart.

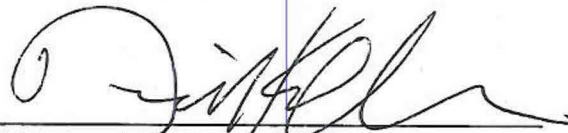
New York courts have routinely held that showup identifications are, by their nature, suggestive and are therefore strongly disfavored. However, exceptions have been created for situations in which exigent circumstances require immediate identification, or in which a suspect is captured at or near a crime scene and can be viewed by a witness within a reasonably short time thereafter. (See, e.g. *People v Riley*, 70 NY2d 523 (1987)).

However, the Court of Appeals has consistently stated that civilian showup identifications of suspects held at police stations are characterized by “unreliability of the most extreme kind” and will be held “inadmissible as a matter of law unless exigency warrants otherwise”. (See Riley, supra). In this instance, there has been no showing that such exigent circumstances existed which would justify the identification process used. The Court is forced to conclude that the showup identification of the Defendant at the Macedon Police Department was unduly suggestive and therefore inadmissible at trial.

However, the Court finds that the testimony did establish that Mr. Harshfield has an independent basis to support an in-court identification of the Defendant. (See, e.g., People v Kelly, 68 AD3d 895 (2nd Dept, 2009)). His contemporaneous observations of the Defendant on the surveillance cameras (which allowed him to “zoom in” on the Defendant’s face), as well as his subsequent observations of the Defendant in the store and in the parking lot, are sufficient to demonstrate that he has the necessary independent basis for an in-court identification at trial. (Contrary to the Defendant’s assertions, the People were not required to produce the video or still photographs as part of their evidence at the hearing.)

This Decision constitutes the Order of the Court.

Dated: January 30, 2013
Lyons, New York

A handwritten signature in black ink, appearing to read 'Dennis M. Kehoe', written over a horizontal line.

Honorable Dennis M. Kehoe
County Court Judge