

People v Hunter

2015 NY Slip Op 32918(U)

August 31, 2015

County Court, Onondaga County

Docket Number: 14-1163

Judge: Joseph E. Fahey

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COUNTY COURT
 COUNTY OF ONONDAGA STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

V.

Ind. # 2014-1128-1

SEAN HUNTER,

Index # 14-1163

Defendant.

DECISION / ORDER

Fahey, J.

The defendant is charged in this indictment with the crimes of Murder in the Second Degree, in violation of *Penal Law § 125.25[1]*, Criminal Possession of a Weapon in the Second Degree, in violation of *Penal Law § 265.03[1]* and Criminal Possession of a Weapon in the Second Degree, in violation of *Penal Law § 265.03[3]*.

The defendant moves for [1] an order pursuant to *Criminal Procedure Law § 710.20[6]* suppressing evidence consisting of potential testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case which potential testimony is not admissible upon the prospective trial owing to an improperly made previous identification of the defendant by the prospective witness; and [2] an order pursuant to *Criminal Procedure Law § 710.20[3]* suppressing evidence consisting of a record or potential testimony reciting or describing a statement of such defendant involuntarily made within the meaning of *Criminal Procedure Law § 60.45*.

A hearing pursuant to *Criminal Procedure Law § 710.60[4]* was held on May 19, 2015 and July 13, 2015. The People offered the testimony of Syracuse Police Detectives Thomas Skardinski, Steven Stonecypher, Jeremy Merola and Jeffrey Beauchine, and the testimony of Latasha Mott. The defendant offered no testimony.

FINDINGS OF FACT

On January 29, 2014, while investigating the death of Lavon Spaight, Det. Jermey Merola and Det. Fred Lamberton transported Shanijah Gainey from her residence at 115 Shonnard Street to the Criminal Investigations Division (CID) to be interviewed about an incident in which Spaight was shot and killed. Gainey was Lavon Spaight's girlfriend and witnessed the shooting on January 28, 2014, but was apparently too distraught to be interviewed immediately after the incident. At approximately 11:37am, Det. Merola placed a piece of paper containing six photographs (Exhibit # 6) face down inside a tan folder and placed the folder on a table in front of Gainey. Merola instructed Gainey to open the folder, turn the array over and let him know if she recognized anyone in the array. Gainey examined the array,

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pointed to the person in position number 2 (the defendant) and stated "that's him, that's him." Gainey wrote her name, the date and time on the photograph of the person she identified. Det. Merola asked Gainey to explain how she knew the person she had identified in the notes section of the array. Gainey wrote "number 2 is the person who shot Lavon."

On January 29, 2014, Det. Steven Stonecypher and Det. Steven Kilburn interviewed Michael Gainey at CID about the death of Lavon Spaights. Gainey is the brother of Shanijah Gainey and was also present when Spaights was shot on January 28, 2014. At approximately 12:28pm, Kilburn placed a piece of paper containing six photographs (Exhibit # 5) face down on a table in front of Gainey. Det. Kilburn asked her to turn the piece of paper over and asked him, with regard to the incident which they had been discussing, if he recognized anyone. Gainey identified the person in position number 6 (the defendant) as "S dot." Gainey wrote his initials, the date and time on the photograph of the person he identified. He also wrote "S dot" in the notes section of the array.

On January 29, 2014, Det. Thomas Skardinski interviewed Nyema Godwin at CID. Godwin indicated that she had witnessed the shooting of Lavon Spaights on January 28, 2014. At approximately 5:13pm, Skardinski placed a piece of paper containing six photographs (Exhibit # 2) face down on a table. He asked Godwin to turn the array over and let him know if she recognized anyone in the array. Godwin turned the array over, pointed to the person in position number 6 (the defendant) and said that he was responsible for shooting the victim. Godwin wrote her first name, the date and time on the photograph of the person she identified.

On January 29, 2014, the defendant was transported to CID by unspecified police personnel and at approximately 8:30pm, he was placed in an interview room by Det. Skardinski. Skardinski asked the defendant if he wanted something to drink and, after the defendant told him he would like a cup of coffee, Skardinski left the room and closed the door behind him. Seven minutes later, Det. Skardinski returned with a cup of coffee for the defendant and told him that he would return shortly with his partner. At about 8:39pm, Skardinski re-entered the room accompanied by Det Daniel Walsh. Both detectives introduced themselves to the defendant, then Det. Walsh said to the defendant, "I'm sure you are curious as to why you are down here ... you got a good idea?" The defendant responded that he had been told there was a picture of him posted on Facebook which accused him of killing someone. Det. Skardinski told the defendant that he needed to advise him of his *Miranda* warnings before the police could ask him any questions about the matter under investigation. Det. Walsh then administered *Miranda* warnings to the defendant from a card. The defendant acknowledged his understanding of each of the rights. After Walsh asked him if he was willing to answer questions, the defendant indicated that he wished to have a lawyer present. Det. Skardinski told the defendant that based upon his request for an attorney, he would not be able to ask him any questions about the matter under investigation and that he would be arrested for murder. Skardinski and Walsh then left the room.

On January 30, 2014, Latasha Mott was interviewed by Det. Michael Bates at CID. Mott indicated that she had been present at the shooting of Lavon Spaight on January 28, 2014. At approximately 5:58pm, Bates showed her a piece of paper containing six photographs (Exhibit # 6 [sic]) and asked her to pick out the picture of the person about whom she had been speaking. Mott pointed to the person in position in position number 6 (the defendant). She wrote her first name, the date and time on the photograph of the person she identified.

CONCLUSIONS OF LAW

A defendant has a due process right not to be the object of a suggestive police identification procedure that creates a very substantial likelihood of irreparable misidentification. *United States v. Thai*, 29 F3 785; *People v. Gee*, 286 AD2d 62. A pretrial identification may be considered impermissibly suggestive, and therefore violative of due process, when it is the result of improper conduct by law enforcement officials. *United States v. Wade*, 388 U.S. 218. A photographic display is suggestive when some characteristic of one picture draws the viewer's attention to it, indicating that the police have made a particular selection. *People v. Cherry*, 150 AD2d 475; *People v. Emmons*, 123 AD2d 475. The People have the initial burden of going forward to establish the reasonableness of the police conduct and the lack of any undue suggestiveness in a pretrial identification procedure. The defendant bears the ultimate burden of proving that the procedure was unduly suggestive. *People v. Chipp*, 75 NY2d 327; *People v. Berrios*, 28 NY2d 361

The Court finds that the six subjects depicted in Exhibit # 2, Exhibit 5, Exhibit # 6 and Exhibit # 6 [sic] from which the defendant was identified by Shanijah Gainey, Michael Gainey, Nyema Godwin and Latasha Mott are all males with relatively similar facial features, apparently similar in stature and age. An examination of the arrays demonstrates no characteristic which would impermissibly draw the viewer's attention to the defendant's photograph in such a way as to indicate that the police had made a particular selection. The Court finds that there was no improper conduct by Det. Merola, Det. Stonecypher, Det. Skardinski or Det. Bates during any of the identification procedures.

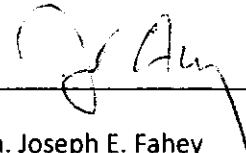
The Court finds that the People have met their initial burden of establishing the reasonableness of the police conduct and the lack of undue suggestiveness in the pretrial identification procedures. The defendant has not borne the ultimate burden of proving that the identification procedures were unduly suggestive. The potential testimony of Shanijah Gainey, Michael Gainey, Nyema Godwin and Latasha Mott regarding their observations of the defendant either at the time or place of commission of the offense or upon some other occasion relevant to the case will be admissible upon the trial of this matter. The defendant's motion to suppress such potential identification testimony is denied.

The Court finds that the defendant was in custody when he was placed in an interview room at CID on January 29, 2014. At approximately 8:39pm, Det. Walsh asked the defendant if he knew why he was brought to CID for questioning. The Court finds that defendant's response was deliberately elicited by Walsh while the defendant was in custody prior to the administration of *Miranda* warnings. The defendant's response is therefore inadmissible upon the trial of this matter. During the subsequent administration of *Miranda* warnings, the defendant invoked his right to counsel. The People will not be

permitted to introduce evidence of the defendant's invocation of his right to counsel upon the trial of this matter.

This constitutes the Decision and Order of the Court.

Dated: August 31, 2015



Hon. Joseph E. Fahey
Onondaga County Court Judge

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