

Short Form Order

Indict. No: 3032A-2008

**SUPREME COURT-STATE OF NEW YORK
CRIMINAL TERM PART - CT5
COUNTY OF SUFFOLK**

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

HEARING DATE: 12-10-09
RELIEF: DECISION AFTER
HEARING

X
THE PEOPLE OF THE STATE OF NEW
YORK,

THOMAS J. SPOTA, SUFFOLK
COUNTY DISTRICT ATTORNEY
By: ADA Megan O'Donnell
200 Center Drive
Riverhead, New York 11901

-against-

JEFFREY CONROY,

DEFENDANT'S ATTY:
WILLIAM J. KEAHON, ESQ.
1393 Veterans Memorial Highway
Suite 312N
Hauppauge, New York 11788-5360

Defendant.

X

Defendant, charged with one count of Murder in the Second Degree, as a Hate Crime, one count of Manslaughter in the First Degree, one count of Gang Assault in the First Degree, one count of Conspiracy in the Fourth Degree, and two counts each of Attempted Gang Assault in the Second Degree and Attempted Assault in the Second Degree as a Hate Crime, has moved for omnibus pretrial relief, including the suppression of certain oral and written statements made by defendant to law enforcement personnel and certain identification testimony.¹ Upon consent of the People, a hearing was held before this Court to determine the voluntariness of these statements and their admissibility at trial as well as the admissibility of identification testimony. At that hearing, the People called three witnesses, Police Officer Sean Mahoney, Police Officer Michael Richardson and Detective John McCleer. Defendant did not call any witnesses. At the conclusion of the hearing, the parties requested an opportunity to submit memoranda on the issues raised during the course of the hearing.

After listening to the testimony adduced at the hearing and after review of the items admitted into evidence by the People, the Court makes the following findings of fact and conclusions of law.

With respect to the identification issues, the Court finds that on November 8, 2008 at approximately 11:57 pm, Police Officer Sean Mahoney, responding to a report of a male victim who had possibly been stabbed, arrived at 37 Funaro Court in Patchogue, New York where he

¹ By letter dated January 27, 2010, the People have consented to the dismissal of counts 6 and 8 charging defendant with Attempted Gang Assault in the Second Degree.

observed a male lying on the ground and two other males standing next to him. The male on the ground had "a large pool of blood around his head and he had a stab wound in his chest" (Hearing transcript, p. 21). Officer Mahoney spoke to one of the two other individuals standing near the victim who told him that his friend had been "in a fight with seven teenagers, that six were white, one was black, and that several of them were wearing black hoodies" (p. 22). When asked by Officer Mahoney if he were to see these individuals again, would he be able to identify them, this individual said that he would. After this description of the seven individuals was broadcast over police radio, Officer Mahoney was directed to respond to the intersection of South Ocean Avenue and Main Street in Patchogue, less than a minute away, where seven individuals matching the prior description were being detained. The eyewitness, whose name was Angel Loja, was taken to this location by Officer Mahoney. Upon arriving at the scene, Loja volunteered that "those are the guys that were fighting with my friend but there was a black guy there too" (pp. 26-27). In fact, one of the seven individuals was blocked from the view of Loja by one of the police officers at the scene. When that officer moved, Loja was able to observe the seventh individual who Loja identified as "the black guy that was with them" (p. 28).

The Court concludes as a matter of law that the conduct of the police in conducting this showup was reasonable, that the conduct of the showup by the detectives was not unduly suggestive and that the identification of defendant was not in any way suggested by the police (*see, People v. Ortiz*, 90 N.Y.2d 533, 664 N.Y.S.2d 243). Accordingly, this witnesses may identify defendant at trial. While it is true that showups are generally disfavored as suggestive in certain instances, they are permissible where they are conducted near the crime scene, and within a matter of minutes after the commission of the crime(*see, People v. Johnson*, 81 N.Y. 2d 828, 595 N.Y.S. 2d 385; *People v. Grassia*, 195 A.D. 2d 607, 601 N.Y.S. 2d 125 [show ups are permissible where they are used in close "spatial and temporal proximity to the commission of the the crime for the purpose of securing a prompt and reliable identification"]).

In this instance, the showup occurred within minutes of the commission of the crime and within a short distance from the crime scene. In fact, Police Officer Mahoney testified that it took him less than a minute to drive from the crime scene to the location of the seven individuals. While it might be argued that defendant was viewed alongside his co-defendants and that this somehow tainted the process, such a procedure has been repeatedly upheld where the process occurs immediately after the crime has been committed and within a limited geographical area (*see, People v. Samuels*, 39 A.D. 3d 569, 833 N.Y.S. 2d 575; *see also, People v. Colson*, 148 A.D.2d 626, 539 N.Y.S.2d 89).

Turning to the admissibility of the statements by this defendant given to Police Officer Richardson, the Court finds that Officer Richardson arrived at the intersection of Main Street and South Ocean Avenue in Patchogue, New York at approximately 12:03 am on November 9, 2008 where seven individuals had been stopped shortly after a report of a stabbing at 37 Funaro Court. Upon arriving at the scene, Officer Richardson approached one of the seven, defendant herein. Officer Richardson made a quick pat down of defendant to insure "that he didn't have a weapon on him" (p. 74). After a minute or two at the scene, Officer Richardson was instructed to cuff the defendant for transport to the police station. After he was cuffed, the officer again patted the defendant down and asked him his name. At that point, defendant asked the officer to

walk him away from the rest of the group and stated "I have a blade on me" (p. 77). The officer began to pat him down around his pockets, but defendant told him no, "lift up my sweatshirt" (p. 77). Stuck in the waistband of his underwear was what appeared to be a knife. Upon removing it from defendant's waistband and opening the knife, Officer Richardson observed what looked like blood on the knife and commented about the blood. Defendant said "I stabbed him" (p. 78).

Defendant was thereafter transported to the Fifth Precinct where he was questioned by Detective John McCleer.

With respect to the statements made to Officer Richardson at the intersection of Main Street and Ocean Avenue in Patchogue, New York, the Court finds that the officer's limited inquiry to defendant was to ascertain the whereabouts of the "blade" that defendant had spontaneously and voluntarily revealed to the officer. The resulting statements by defendant are thus admissible under the public safety exception to the Miranda rule (*see, New York v. Quarles*, 467 U.S. 649, *see also, People v. Chatman*, 122 A.D. 2d 148, *People v. Ingram*, 177 A.D. 2d 650, 576 N.Y.S. 2d 352). Under these circumstances, the officer's limited questions to defendant were reasonably prompted by the concern to secure the blade and thus the safety of the investigating officers, and the safety of the public. The motivation for the minimal questioning of defendant was not to elicit testimonial evidence and thus, the traditional Miranda warnings were not required. These statements are, therefore, admissible at trial as part of the People's direct case.

This Court finds that prior to being questioned by Detective McCleer, defendant was advised of his Constitutional rights orally and was asked to place his initials on a so-called "Miranda" card (People's Hearing Exhibit No. 1) to indicate that he was so advised and understood the nature of his rights and his waiver thereof. The Court further finds that prior to the taking of the written statement from defendant by Detective McCleer, defendant was again advised of his rights and again indicated that he understood those rights but was nonetheless willing to waive them. Again, defendant acknowledged both his rights and this waiver by placing his initials on the top portion of what was to become his written statement (People's Hearing Exhibit No. 2).

Accordingly, the Court concludes that prior to both his oral and written statements, defendant was advised of his constitutional rights under *Miranda v. Arizona* (384 U.S. 436, 86 S.Ct. 1602), that he acknowledged that he understood those rights, that he knowingly, intelligently and voluntarily agreed to waive those rights and speak to Detective McCleer without the presence of a lawyer. The Court concludes as a matter of law that the People have established beyond a reasonable doubt these oral and written statements made by defendant were voluntary and that they were made only after defendant had knowingly and voluntarily waived his right to counsel.

Based upon this testimony and evidence, the Court concludes that the oral and written statements by defendant to Detective McCleer were not "involuntarily made" within the meaning of CPL § 60.45(2) and consequently, those statements will be admissible at as part of the People's direct case.

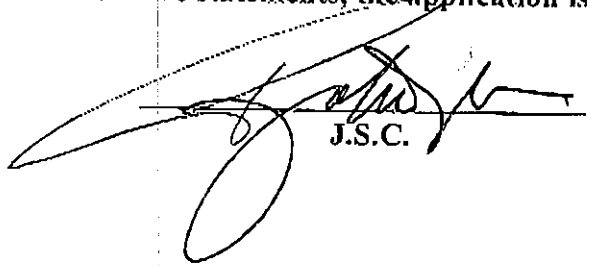
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Indict. No: 3032A-08

Finally, to the extent defendant seeks to re-open the Huntley hearing to raise several issues with regard to the admissibility of defendant's statements, the application is denied.

Dated: FEBRUARY 11, 2010



J.S.C.

**SUPREME COURT-STATE OF NEW YORK
CRIMINAL TERM PART - CT5
COUNTY OF SUFFOLK**

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

**MOTION DATE: 10-14-09
RELIEF: DECISION AFTER HEARING**

X
THE PEOPLE OF THE STATE OF NEW
YORK,

-against-

KEVIN SHEA,
Defendant.
X

THOMAS J. SPOTA, SUFFOLK
COUNTY DISTRICT ATTORNEY
By: ADA Megan O'Donnell
200 Center Drive
Riverhead, New York 11901

DEFENDANT'S ATTY:
STEVEN M. POLITI, ESQ.
320 Carleton Avenue, Suite 1000
Central Islip, New York 11722

Defendant, charged with one count of Gang Assault in the First Degree, one count of Conspiracy in the Fourth Degree, and two counts each of Attempted Gang Assault in the Second Degree and Attempted Assault in the Second Degree as a hate crime, has moved for omnibus pretrial relief, including the suppression of certain oral and written statements made by defendant to law enforcement personnel and certain identification testimony.¹ Upon consent of the People, a hearing was held before this Court to determine the voluntariness of these statements and their admissibility at trial as well as the admissibility of identification testimony. At that hearing, the People called two witnesses, Police Officer Sean Mahoney and Detective John McCleer. Defendant did not call any witnesses. At the conclusion of the hearing, the parties requested an opportunity to submit memoranda on the issues raised during the course of the hearing.

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¹ It should be noted that by letter dated January 27, 2010, the people consented to the dismissal of Counts Six and Eight of the Indictment charging the defendant with two counts of Attempted Gang Assault in the Second Degree.

(Hearing transcript, p. 14). Officer Mahoney spoke to one of the two other individuals standing near the stabbing victim who told him that his friend had been "fighting with seven teenagers, six white, one black, and that some of them were wearing hoodies" (p. 15). When asked by Officer Mahoney if he were to see these individuals again, would he be able to identify him, this individual said that he would. After this description of the seven individuals was broadcast over police radio, Officer Mahoney was directed to respond to the intersection of South Ocean Avenue and Main Street in Patchogue, only a minute away, where seven individuals matching the prior description were being detained. The eyewitness, whose name was Angel Loja, was taken to this location by Officer Mahoney. Upon arriving at the scene, Loja volunteered that "those are the guys that were fighting with my friend but there was a black guy too." In fact, one of the seven individuals was blocked from the view of Loja by one of the police officers at the scene. When that officer moved, Loja was able to observe the seventh individual who Loja identified as "the black guy that was with them" (p. 19).

The Court concludes as a matter of law that the conduct of the police in conducting this showup was reasonable, that the conduct of the showup by the detectives was not unduly suggestive and that the identification of defendant was not in any way suggested by the police (see, People v. Ortiz, 90 N.Y.2d 533, 664 N.Y.S.2d 243). Accordingly, this witnesses may identify defendant at trial. While it is true that showups are generally disfavored as suggestive in certain instances, they are permissible where they are conducted near the crime scene, and within a matter of minutes after the commission of the crime (see, People v. Johnson, 81 N.Y. 2d 828, 595 N.Y.S. 2d 385; see also, People v. Grassia, 195 A.D. 2d 607, 601 N.Y.S. 2d 125 [show ups are permissible where they are used in close "spatial and temporal proximity to the commission of the crime for the purpose of securing a prompt and reliable identification"]).

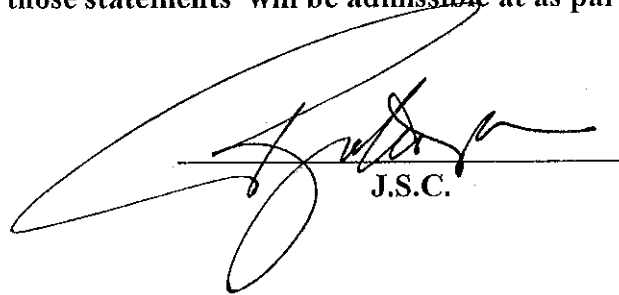
In this instance, the showup occurred within minutes of the commission of the crime and within a short distance from the crime scene. In fact, Police Officer Mahoney testified that it took him only one minute to drive from the crime scene to the location of the seven individuals. While defendant argues that defendant was viewed alongside his co-defendants and that this somehow tainted the process, such a procedure has been repeatedly upheld where the process occurs immediately after the crime has been committed and within a limited geographical area (see, People v. Samuels, 39 A.D. 3d 569, 833 N.Y.S. 2d 575; see also, People v. Colson, 148 A.D.2d 626, 539 N.Y.S.2d 89).

Turning to the admissibility of the statements by this defendant given to Detective McCleer, this Court finds that prior to being questioned by the Detective, defendant was advised of his Constitutional rights orally and was asked to place his initials on a so-called "Miranda" card (People's hearing exhibit No. 1) to indicate that he was so advised and understood the nature of his rights and his waiver thereof. The Court further finds that prior to the taking of the written statement from defendant by Detective McCleer, defendant was again advised of his rights and again indicated that he understood those rights but was nonetheless willing to waive them. Again, defendant acknowledged both his rights and this waiver by placing his initials on the top portion of what was to become his written statement (People's hearing exhibit No. 2).

Accordingly, the Court concludes that prior to both his oral and written statements, defendant was advised of his constitutional rights under Miranda v. Arizona (384 U.S. 436, 86 S. Ct. 1602), that he acknowledged that he understood those rights, that he knowingly, intelligently and voluntarily agreed to waive those rights and speak to Detective McCleer without the presence of a lawyer. The Court concludes as a matter of law that the People have established beyond a reasonable doubt these oral and written statements made by defendant were voluntary and that they were made only after defendant had knowingly and voluntarily waived his right to counsel.

Based upon this testimony and evidence, the Court concludes that the oral and written statements by defendant to Detective McCleer were not "involuntarily made" within the meaning of CPL § 60.45(2) and consequently, those statements will be admissible at as part of the People's direct case.

Dated: FEBRUARY 9, 2010



J.S.C.