

MEMORANDUM

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-19**

THE PEOPLE OF THE STATE OF NEW YORK : **BY: STEPHEN A. KNOFF**
:
: **DATED: MARCH 10, 2008**
-against- :
: **INDICTMENT NO. 2598/2006**
:
SHAKEIL CHANDLER : **MOTION TO SUPPRESS**
: **WADE/HUNTLEY/DUNAWAY/MAPP**
: **HEARING**
Defendant :
-----:

The defendant moves to suppress identification testimony, statements and physical evidence. He is charged in a three-count indictment with the crimes of murder in the second degree, criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree. A suppression hearing was held before this Court on April 26, 2007, June 29, 2007, November 5, 2007 and January 9, 2008. The People presented three witnesses at this hearing: Police Officer (now Detective) Michael Gildea, Detective Kevin Cashen and Assistant District Attorney Jeneen Wunder. The

defendant did not present any witnesses. This Court determines that Police Officer Gildea, Detective Cashen and Assistant District Attorney Wunder gave credible testimony. This Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

On September 25, 2006, Police Officer Gildea, a six-year veteran of the New York City Police Department, was assigned to the 101 precinct detective squad engaged in detective - type duties. On that date, he was assigned to investigate the shooting death of Mario Young which occurred that day immediately prior to approximately 3:45 pm, in the vicinity of Mott Avenue and Beach Channel Drive, in Queens. After being notified by radio communications of the shooting, Police Officer Gildea went to the scene of the incident. He learned that an individual named Mario Young had been shot and been removed to St. John's Hospital. Police Officer Gildea traveled to St. John's hospital, where the victim, Mario Young, was in the hospital's emergency room. The officer was not able to speak with the victim before he died.

On September 25, 2006, Detective Cashen a 27 year veteran of the New York City Police Department, was also assigned to investigate the shooting death of Mario Young. On the day of the shooting, Detective Cashen traveled to Jamaica Hospital to interview the defendant and Joel Clark, both of whom had been taken there for treatment of stab wounds, in what originally appeared to Detective Cahen to be an unrelated incident.

At approximately 5:30-6:30p.m. that same day, Detective Cashen interviewed the defendant at the hospital. The defendant advised the detective that he was walking down the street between McDonald's and the liquor store when he was jumped by seven guys, who knocked him to the ground, kicked him, punched him, and left. The defendant could not identify any of his assailants. When the detective asked the defendant if he knew anything about the shooting, he told the detective that he was in pain and to go find the person who stabbed him; that he had nothing to say. No Miranda warnings were given. The defendant was not in custody at this time. The detective had no information at the time that defendant was a perpetrator of the

homicide. (He did admit to a suspicion that the incidents might possibly be related.)

After this conversation with the defendant at Jamaica Hospital, the detective was given clothing that belonged to the defendant; he was handed a bag of clothing by personnel who worked at the hospital emergency room. Detective Cashen did not personally remove any property from the defendant. The detective subsequently vouchered this property, to wit: one pink glove, blue jeans, a white tee shirt, blue pants and a brown belt. At the time he received the clothing, the defendant was not under arrest; his status was a victim and his clothing was vouchered to test for forensic evidence.

Later in the evening, at the 101st Precinct, Police Officer Gildea interviewed a witness to the shooting, (a female) (referred to herein as witness #1). This witness advised the officer that she had observed a male Black wearing a white shirt, blue jeans, 18-21 years old with bloodstains on his tee-shirt, running from the scene of the shooting incident, trying to place what she believed to be a dark-colored firearm in his waistband or waist pocket. (She did not

witness the actual shooting.) The witness stated that this individual was alone and he was running from Beach Channel Drive down Mott Avenue.

At 8:15pm, Police Officer Gildea showed witness #1 a computer-generated photo array an original and redacted copy of which were admitted into evidence at the hearing. The witness was shown images of six individuals in the photo array was asked if she recognized anyone from the incident that she described. She then circled image number 4 stating that he was the person that she described running from Beach Channel Drive with what she believed was a firearm. Image number 4 was a photo of the defendant, Shakeil Chandler. (The defendant's photo had been pre-selected by the police prior to putting together the photo-array.)

On September 26, 2006, in the early afternoon, Police Officer Gildea accompanied by Detective McHale, met with another female witness (referred to herein as witness #2). This witness, who was interviewed at her residence, told the officer that at the time of the shooting, she was on Mott Avenue in front of the liquor store,

situated right next to McDonald's restaurant, at the intersection of Beach Channel Drive and Mott Avenue. She observed a group of male Blacks involved in an argument. She observed one male black with an odd-shaped nose, wearing a white tee shirt and blue jeans, was knocked to the ground during the physical altercation that ensued and then the other males began to disperse and walk away. She saw the male on the ground get up, follow the males that were walking away, fire a firearm three to five times in the direction of the males walking away. The witness did not observe anyone else shooting or displaying any firearms. (This witness actually saw and heard the shots being fired.) She observed the individual who had fired the weapon then run on Mott Avenue away from Beach Channel Drive. At approximately 12:22pm, witness #2 was shown the computer-generated photo array, an original and redacted copy of which was admitted into evidence at the hearing. The witness was told she was going to look at six images and was asked if she recognized the person who she described. The witness identified image number four as the individual she had just described; the person that she saw as lying

on the ground, getting up, firing the shots and running from the location. Detective McHale was present during this identification procedure. Image number 4 was a photo of the defendant, Shakeil Chandler.

Later that same day, at approximately 2:30pm, Police Officer Gildea went to Jamaica Hospital, where he met the defendant who was in a hospital room. The defendant was informed by officer Gildea that he was under arrest. (Officer Gildea does not recall if he told the defendant what he was under arrest for.) Officer Gildea then advised the defendant of his Miranda rights, from a document, a Miranda rights sheet, admitted into evidence at the hearing. After each of his rights, the defendant replied "Yes" and then wrote "Yes", indicating he understood each of his rights and that he was willing to answer questions. Both the defendant and Officer Gildea then signed the Miranda rights document at 2:35pm. During this process, the defendant appeared coherent. He never indicated that he was taking any medication or that he wasn't feeling up to talking. He did not complain as to any pain. He did not slur his speech or

demonstrate any lack of focus. He did not request to call an attorney or his family.

The officer proceeded to ask the defendant if he wanted to say anything about the previous day. The defendant gave the officer a verbal statement, for several minutes, and then a written statement. In his verbal statement, the defendant advised the officer that he was walking on Mott Avenue with a friend, when he was approached by a group of male Blacks. The two groups exchanged words. The defendant said he was hit or punched. During the fight, he heard gunshots. He and his friend Joel then ran away from the location. The defendant stated that his friend never left his side.

After the verbal statement, the defendant agreed to write down what he had just told the officer. The defendant then did so in his own handwriting. (Defendant's written statement was admitted into evidence at the hearing.) The defendant signed this statement, and the officer added the date and time. Officer Gildea and Detective McHale, who was also present, signed the statement as well. At the time the defendant wrote out the statement, he was sitting in a

chair, not in a hospital bed. Officer Gildea believes that the defendant had one hand cuffed to his chair. At the time of the writing, the defendant asked the officer how to spell out certain words. The officer asked the defendant to initial where he had crossed out several words. At no time did the defendant ask for a lawyer. The defendant was cooperative during this interview process. He was never threatened or made any promises in exchange for his statement.

On the same date, at approximately 7:35pm, the defendant who was still at Jamaica Hospital, was re-interviewed by ADA Wunder, Officer Gildea and Detective Nava. Police Officer Stewart was also present. This interview was recorded on audio-tape cassettes (admitted into evidence at the hearing). Prior to the start of this interview, ADA Wunder advised the defendant of his Miranda rights. As to the Miranda right as specifically advised by ADA Wunder, to wit: "You have the right to consult with an attorney before speaking with the police or myself and to have an attorney present during any questioning now or in the future. Do you understand?", the defendant

initially replied: "Yes-do you think I should have that now?" ADA Wunder did not answer defendant's question but simply exactly repeated this specific Miranda right to the defendant and the defendant responded "Yes" when asked if he understood. As to each of defendant's Miranda rights, the defendant replied "Yes", indicating that he understood each of his rights and that having been advised of his rights, he was willing to speak to ADA Wunder as to the incident.

On September 26, 2006, the defendant was removed from Jamaica Hospital to the 101st precinct. At approximately 11:30pm, the defendant made an additional statement. The defendant stated to Officer Gildea, in sum and substance, "I got stabbed. I was jumped, I heard shots and I ran." The defendant made this statement to the officer after Officer Gildea had just advised him he was about to be brought to Central Booking and defendant's statement was not in response to any interrogation by the officer.

On October 12, 2006, at the 101st precinct, Officer Gildea conducted a lineup with witness #2. Five fillers were obtained for

this lineup; held at the opposite end of the precinct from where the witness was waiting. To ensure the witness and fillers were kept apart, the witness was accompanied by an officer at all times and escorted to the lineup. The defendant was also kept away from the witness, in a holding cell, in the precinct. Photographs were taken of this lineup. (Such photos were admitted into evidence at the hearing.) The defendant was in position number three in the lineup. The witness was not told that the person she had selected in the photo array would be in the lineup.

On this date, at approximately 6:30 pm, witness #2 viewed the lineup. Officer Gildea asked her if she recognized anyone. She answered yes. She was asked: what number? She replied number three. She was asked: where she recognized number three from? She told the officer that number three was the person that she had described to him who was on the floor who did shoot on the date of the incident and who she saw flee the scene. After the lineup, the witness was then taken back to her residence. No other witnesses viewed that lineup.

During the course of his investigation, Police Officer Gildea also interviewed an individual named Kamel Taylor. He interviewed him numerous times throughout the day of the shooting incident, first at St. John's the hospital where he was with friends and family of the decedent until and after the arrest of the defendant. Mr. Taylor advised Police Officer Galdea that he knew the defendant from the neighborhood and that they went to the same school for a period of time in a school year. They were not on good terms; having had an altercation as early as a week before the shooting incident. Mr. Taylor knew the defendant for over two years, prior to the incident herein and knew him by his full name. Mr. Taylor and the defendant would speak to each other to have "words" with each other on an unfriendly basis. He lived a couple of blocks away from the defendant and saw the defendant at least every other day. Approximately two months after the shooting incident, Mr. Taylor told Police Officer Gildea that the defendant did the shooting. In fact, Mr. Taylor advised the officer that he was one of the people involved in the fight on September 25, 2006, minutes before the

shooting occurred. Mr. Taylor claimed he did not stab the defendant.

In September of 2006, Assistant District Attorney Jeneen Wunder, who was working in the Homicide Investigations Bureau of the Queens District Attorney's Office, was assigned to the case of the shooting death of Mario Young. She assisted in the grand jury presentation of this case. She was present on November 29, 2006, when a witness, Kemel Taylor, testified before the grand jury on this indictment. During his testimony, Assistant District Attorney Peter Lomp showed a photograph of the defendant to Mr. Taylor, who identified the photograph as that of the person he knew to be Shakeil Chandler. (A copy of such photograph was admitted into evidence at the hearing).

CONCLUSIONS OF LAW

IDENTIFICATION TESTIMONY

This Court will first address whether or not there is any basis for suppression of identification testimony herein. At issue are pre-trial identification procedures employed herein, to wit: two photographic identification procedures (photo-arrays)

(witness 1&2), a lineup procedure (witness #2) and a confirmatory identification procedure (Kamel Taylor).

The photo-arrays presented to witness' #1 & #2 were entirely proper and this Court finds no police impropriety in connection with these procedures. *See, People v Garcia*, 219 AD2d 541 (1st Dept. 1995). There is no basis to conclude that the identification procedures were suggestive. *See, People v Acosta*, 176 AD2d 534 (1st Dept. 1991). Each witness viewed an array of six images. This Court has reviewed such photo-arrays and concludes the photos used to constitute such arrays where of individuals who fairly resembled each other. "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 Robert*, 184 AD2d 597,598 (2d Dept 1992). Here, the People have met their initial burden of establishing the reasonableness of the police conduct in assembling and displaying the photo arrays. The defendant has failed to meet his ultimate burden of proving these procedures to be unduly suggestive. *See,*

People v Jackson, 98 NY2d 555 (2002); *People v Bell*, 19 AD3d 1074 (4th Dept. 2005). Indeed, the evidence presented at the hearing supports this Court's conclusion that there was no infirmity or suggestiveness as to such procedures. In addition, there is no basis to conclude that the photo array viewed by witness #2 in any way tainted her subsequent lineup identification.

Likewise, the lineup viewed by witness #2 was not unduly suggestive as a matter of law, *See, People v Chipp*, 75 NY2d 327 (1990). All of the other participants in the lineup appeared to be of similar age, weight and build as the defendant and had similar skin tones and hair styles. *See, People v Quick*, 158 AD2d 625 (2d Dept 1990). There is no requirement that the individuals that surround the defendant in the lineup be identical in appearance. *See, People v Mattocks*, 133 AD2d 89 (2d Dept 1987). This Court has examined the lineup photographs and determines that the fillers were reasonably similar to the defendant. *See, People v Ellis*, 222 AD2d 519 (2d Dept. 1995).

The identification by Kamel Taylor on November 29, 2006 by

photograph was accomplished without suggestion and without the need for a more formal or stricter identification procedure. The testimony adduced at this hearing established that Kamel Taylor knew the defendant from school, lived near him and had many prior altercations with him. They were not family or friends, but this witness knew the defendant by first and last name. Accordingly, this Court concludes that the People have met their burden of showing that the identification procedure employed herein was merely confirmatory and was impervious to police suggestion. See, *People v Rodriguez*, 79 NY2d 445 (1992); See, *People v Tomlin*, 41 AD3d 620 (2d Dept. 2007); See, *People v Garner*, 27 AD3d 764 (2d Dept. 2006).

PRE-TRIAL STATEMENTS

It is clear that the purpose of the CPL §710.30 (1)(a) notice statute is to facilitate a defendant's opportunity to challenge, before trial, the voluntariness of a defendant's statement. See, *People v O'Doherty*, 70 NY2d 479 (1987). The statute requires that whenever the People intend to offer evidence of a defendant's

statement made to a public servant, they must serve notice of such evidence on defendant within 15 days of arraignment, and before trial. *See, People v Lopez*, 84 NY2d 425 (1994). In this notice, the People are required to disclose the time and place of the oral and written statements, to whom they were provided, and the sum and substance of each statement. *See, Lopez, supra. See also, People v Bennett*, 56 NY2d 837 (1982). Each statement must be described sufficiently so that the defendant can intelligently identify them. *See, Lopez, supra*. In spite of the defendant's claim that one of the statements was more detailed than the noticed statement, the information provided in the notice of the statement adequately apprised the defendant of this statement.

In addition, this Court notes that by proceeding with this hearing and litigating the issue of suppression of such statement, any preclusion of said "enhanced" statement is moot. *See, People v Kirkland*, 89 NY2d 903 (1996).

The defendant is alleged to have made a statement to Detective Cashen, a series of statements to Police Officer Gildea,

and a statement to ADA Wunder.

The defendant's first statement, chronologically, is an oral statement made to Detective Kevin Cashan, at Jamaica Hospital, where the defendant was being treated as a victim of a stabbing. He was being dealt with by Detective Cashen as a crime victim and clearly there is no basis to conclude that defendant was under arrest or that he was in custody at the time of this statement. As such, this Court finds this statement to be voluntary. See, *People v Yuki*, 25 NY2d 585 (1969); See, *People v Phinney*, 22 NY2d 288 (1968).

The second statement, made to Police Officer Gildea, at Jamaica Hospital, was elicited after the defendant knowingly, voluntarily and intelligently waived his Miranda rights. The defendant, though having one hand handcuffed to the chair, appeared lucid and was not in physical distress from his injuries or impaired by medication. See, *People v Shepard*, 13 AD3d 1223 (4th Dept. 2004). Accordingly, this Court determines that there is no basis to conclude that defendant's mental capacity was lacking or

that he was unable to appreciate the nature and consequences of his statement. There is no basis for suppression of this statement. *See, People v Schompert*, 19 NY2d 300 (1967).

The third statement (audio-taped) made to ADA Wunder, was also elicited after the defendant was advised of his Miranda warnings. While it is true that the defendant asked the assistant district attorney if she thought he should have an attorney, defendant's assertion that this constituted an unequivocal request for a lawyer, rendering the statement involuntary, is incorrect.

Such a question by the defendant did not constitute an unequivocal invocation of his right to counsel. *See, People v Hicks*, 69 NY2d 969 (1987); *See also, People v Santiago*, 133 AD2d 429 (2d Dept. 1987; *See also People v Prout*, 224 AD2d 254 (2d Dept. 1996). An unequivocal right to counsel must be clear and unambiguous; a defendant must state unequivocally that he wants a lawyer. *See, People v Glover*, 87 NY2d 838 (1995). Under these circumstances, his right to counsel did not attach. *See, Hicks supra*.

The statement made to Police Officer Gildea, as the defendant was taken to Central Booking, is clearly voluntary and without coercion. This statement was volunteered, and made without police interrogation. *Rhode Island v Innes*, 446 US 291 (1990), *People v Kaye* 25 NY2d 139 (1969), *People v Maerling*, 46 NY2d 289 (1978). No constitutional infirmity exists here.

In sum, this Court concludes that there is no basis for suppression of any of defendant's statements.

PHYSICAL EVIDENCE

The defendant's clothing was removed by hospital personnel while the defendant was being treated for stab wounds. At this time, it was thought that the defendant was solely a victim of an assault; rather than a perpetrator of a homicide. He was not under arrest. The police properly took possession of defendant's clothing, since the clothing consisted of evidence of a stabbing incident. See *People v Lewis*, 243 AD2d 256 (1st Dept. 1997). Suppression of defendant's clothing, obtained at the hospital where the defendant was viewed as a crime victim, is not

warranted. *People v Quinones*, 247 AD2d 216 (1st Dept 1998).

Finally, this Court notes that there is no basis whatsoever for a finding that any evidence at issue herein should be suppressed as the product of an unlawful arrest. See *Dunaway v New York*, 442 US 200 (1979).

In conclusion, this Court determines that the defendant's motion to suppress identification testimony, his statements to law enforcement personnel and physical evidence is denied in all respects.

The foregoing constitutes the order, opinion and decision of this court.

STEPHEN A. KNOPF, J.S.C.