

FAMILY COURT OF THE STATE OF NEW YORK  
CITY OF NEW YORK: COUNTY OF NEW YORK

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In the Matter of

Docket No. D-25360/09

Abeola Cross

Decision And Order

A Person Alleged to be a Juvenile

Delinquent,

Respondent.

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The respondent has been charged with several counts relating to an alleged robbery. She has moved for an order suppressing the introduction of potential testimony by the alleged victim at the prospective fact finding hearing, concerning an observation of the respondent either at the time or place of the commission of the offense or upon some other occasion relevant to the case, on the ground that such identification evidence is the product of an impermissibly suggestive identification procedure.

With respect to identification evidence, the Presentment Agency has 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. Respondents, however, bear the ultimate burden of proving that the identification procedure was unduly suggestive (See, *People v. Chipp*, 75 NY2d 327, 335, *People v. Ortiz*, 90 NY2d 533, 537; *People v. Berrios*, 38 NY2d 361).

In order to determine whether identification evidence should be suppressed a Wade hearing was conducted before me on October 28, 2009. Police Officer Leslie Robles testified for the Presentment Agency. I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

Police Officer Lesley Robles testified that on August 26, 2009 at 4:44 a.m. she was driving a marked police car when she received a call over her police radio of a robbery in progress at East 15 th Street and Irving Place. Officer Robles drove to East 15 th Street and Irving Place, which took two minutes. Three girls--the complainant and two witnesses-- approached the police car, saying that they had been robbed. The complainant, Amanda Bernhardt, told the officer what happened.

She initially stated it was four female blacks, approximately 18 years old; one wearing plaid shorts, one wearing—excuse me, two wearing a doo-rag or scarf on their head and then she said approximately five-five to five-seven in height...She stated the she was coming from Brooklyn and that these four ladies followed her from Brooklyn the train to East 15 th Street or I should say East 14 th Street.” (Tr. 10-28-09, p. 6 ll. 1-5; 10-12).

The complainant also told Officer Robles that after the robbery the assailants headed westbound on 14 th Street and that the robbery took place five minutes before Officer Robles arrived at 15 th Street. Officer Robles put the description of the alleged assailants over the police radio. The complainant and the two witnesses got into the police car and headed towards 14 th Street. “Again, I just asked her to give me a description, again. And I told her exactly what we’re going to do while she’s in the vehicle. I told her we were going to do a canvas, to see if we can locate the girls and we took he back.” (Tr. 10-28-09, p. 8, ll. 1-4).

By the time Officer Robles’ arrived with the complainant at 14 th Street the police had stopped four girls, who were standing in front of the subway stairs on East 14 Street and Union Square East. Officer Robles stopped her car 20 to 25 feet from the four suspects, who were not handcuffed. The area was well lit by lampposts.

“I asked her, are these the girls?...She said ‘yes.’ ” (Tr. 10-28-09, p. 10, ll. 8; 12). Before the identification the two witnesses who were also in the police car talked to Officer Robles. “They, too, just wanted to further issue what they had on, where they were headed and how they acquired their attention initially and what they were doing in the process of her getting her bag taken.” (Tr. 10-28-09, p. 11, ll. 18-21). After the complainant made her identification the two witnesses said “Yeah, that’s them. That’s them.” (Tr. 10-28-09, p. 12, l. 4).

On cross examination Officer Robles testified that the three girls flagged down her police car. The girls were screaming, making it impossible for Officer Robles to understand them. Officer Robles told the girls to calm down and the complainant told her what happened. “She was hysterical. She was like, I just been robbed. They took my wallet. They took my bag. She was like these four black girls just took my stuff and she just got off the train and she didn’t know where she was.” (Tr. 10-28-09 p. 18, ll. 8-11). An arrest report introduced into evidence said that the respondent was wearing pink jogging clothes.

Officer Robles also told the court that she did not hear the entire conversation between the complainant and the two witnesses while they were in the police car, although they heard a message over police radio saying that four possible suspects had been stopped. When Officer Robles asked the complainant if the four individuals at 14 th Street were the girls who had robbed her, the two witnesses remained silent until after the complainant identified them.

#### CONCLUSIONS OF LAW

In regards to the identification procedure, the identification of respondents by the victim in this matter is within the definition of that type of identification known as a “showup” identification. While “[s]howup identifications are disfavored, since they are suggestive by their very nature \*\*\* [n]evertheless, prompt showup identifications which are conducted in close geographic and temporal proximity to the crime are not presumptively infirm and in fact have generally been allowed.” ( *People v. Ortiz* , 90 NY2d 533, 537; see , *People v. Duuvon* , 77 NY2d 541, 543; *People v. Johnson* , 81 NY2d 828, 831; *People v. Santiago* , 235 AD2d 229; *People v. Rodney* , 237 AD2d 541.) In the case at bar the showup procedure was reasonable, in that it occurred in close spatial and temporal proximity to the robbery, “as the result of a single unbroken chain of events.” *People v. Williams* , 15 AD3d 244 (1 st Dept.)(See, *People v. Brisco* , supra, [showup conducted one hour after crime found reasonable]; *People v. Gatling* , supra, [showup conducted forty-five minutes after crime is found reasonable]; *People v. Greene* , 39 AD2d 268 [1 st Dept][showup that takes place two miles from crime scene is deemed reasonable]). In addition, nothing in the record supports speculation on the respondent’s part that the two witnesses said something to the complainant, while they were in the police car, that prompted the complainant to identify the respondent. In fact, the testimony indicates that nothing improper was said

between the witnesses and the complainant.

For all the reasons herein I find that the respondents’ motion to suppress identification evidence is denied.

This constitutes the decision and order of the Court.

E N T E R:

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MARY E. BEDNAR

Judge of the Family Court

Dated: New York, N.Y.

November , 2009