

8/18/19 10:05 AM

PENDING FELONY COMPLAINT IN BUFFALO CITY COURT

STATE OF NEW YORK
COUNTY OF ERIE : BUFFALO CITY COURT

THE PEOPLE OF THE STATE OF NEW YORK

vs.

Keyontay C Ricks

HONORABLE **Debra Givens**

04-1561L
McHale ADA
Date Transmitted: July 30, 2004

Kelley A. Omel, Assistant District Attorney
Tracy Moore, Court Reporter

LOCAL COURT INFORMATION

Docket # **04 F 9447**

Court Control Number **57044276Y**

Arraign Date **6/29/2004**

DEFENDANT INFORMATION

<u>6/28/2004</u>	<u>BPD</u>	<u>B</u>	<u>6/22/1982</u>	<u>2863730J</u>
ARREST DATE	AGENCY	SEX	RACEDATE OF BIRTH	NYSID NUMBER
			<u>Michael Ingham</u>	<u>(716) 531-1639</u>
			DEFENSE COUNSEL (IF KNOWN)	DEF. CSL. PHONE #

Defendant's Address: 30 Pheasant Run Left
(including zip code) Buffalo, NY 14228

Bail Posted Y/N
Bail Amount/Type \$bail
posted10,000.AB

CHARGES HELD FOR ACTION OF GRAND JURY (including section numbers): PL 160.15(02);PL 115.01;PL 160.15(01)

THE FOLLOWING ARE BEING FORWARDED TO ERIE COUNTY COURT
(please check all that apply):

☐ Felony Complaint (mandatory)	☐ Bail Papers	☐ License Forwarded to Albany
☐ Supporting Deposition (mandatory)	☐ Securing Order	☐ (Date Forwarded)
☐ UCS 540	☐ Notice of Appearance	☐ DCJS Report
☐ Arrest Report	☐ 501 Card	☐ UTT's (number enclosed)
☐ Other (DWI, refusal, appearance ticket, etc.)		

Submit this form along with the appropriate papers as provided in CPL Section 180.70(1) to the address of the appropriate court.

Erie Supreme/County Court
92 Franklin Street
Buffalo, New York 14202

Court Name
Street Address
City, State, Zip

This action is deemed to be still pending in the local criminal court.

☐ Please notify this court if an indictment has not been filed within 90 () days, or a request has not been made to return this case to the lower criminal court.

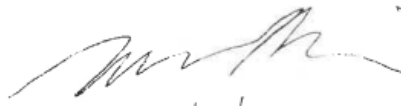
BY _____
Court Assistant
for SHARON A. THOMAS, Chief Clerk for Buffalo City Court

M

I Marina Borina am writing this statement about the incident that happened on the 28th of June 2004 when I along with three other people got arrested for a robbery that happened in the Bailey and Kensington plaza. However I know for a fact that there was not a robbery committed. Antwynias Degraffenried who lives on Durham st was not robbed. I talked to him I got out, and he stated that he owed Kurtel Walker some money, and he feared that if he didn't pay Kurtel and he would do something because they stayed in the same area. Antwynias said that he was not coming to court so there shouldn't be a problem. I told him that there was a problem because three innocent people were being charged with this. Antwynias said if need be he will step up. If Keyontay gets found guilty at trial. I also had another conversation with Antwynias again. He said that he had filed a law suit against rent-a-center and that he was not trying to go to jail. I Marina Borina, Keyontay Ricks and Tina Smith were together all that night and all that day, until we got arrested. We never planned or had any knowledge of this incident.

When I had gotten subpenad to come to the grand jury, I went and talked to the DA. I told them that I Marina Borina, Keyontay Ricks and Tina Smith had nothing to do with this incident, and he told me that I was lying that I needed to come back with a different story.

State of New York
County of Erie
Subscribed and Sworn to
before me Toni Hodge
this 5 day of Oct 2005


10/5/05

TONI HODGE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 25, 2006

COLLOQUY

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1 such conduct constitutes a related but separate
2 offense upon the part of the actor, in this case
3 the actor being Mr. Ricks, he is liable for that
4 offense only, and not for the conduct or offense
5 committed by the other person. Judge, I would urge
6 the Court to consider the robbery under that
7 section of law. I think that it is the exactly
8 what was intended, 20.10 was intended for is the
9 facts in this case. The possession of the stolen
10 property in this case was something that is
11 necessarily incidental to a purported robbery. It
12 removes the case from section 20.00 and 20.05 by
13 law. It says notwithstanding those provisions, if
14 the conduct is necessarily incidental, and that's
15 all that we have here in the light most favorable
16 to the People, and I don't even think they have
17 proven a robbery or possession of stolen property,
18 Judge. But I don't think the robbery first should
19 go to the jury. They have not shown that Mr. Ricks
20 was present on the scene. They have not proven
21 that Mr. Ricks was present in the vehicle when the
22 perpetrator of the crime, Kurtel Walker, got in the
23 vehicle. Their own witness said he saw two females
24 in the car. There has been no evidence of any sort
25

COLLOQUY

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2 of conspiracy or plan that was hatched. There is
3 absolutely no evidence that Mr. Ricks was involved
4 whatsoever in a robbery in this case.

5 With respect to the possession of stolen
6 property, Judge, the requirement is the People
7 establish the value beyond three thousand dollars.
8 Their own evidence, Judge, would suggest that
9 something is amiss here; that their evidence shows
10 that over four thousand dollars was to be deposited
11 in the bank. Only thirty-four hundred dollars was
12 recovered on Mr. Ricks. There is no chain of
13 custody of the money. Again there is no proof that
14 Mr. Ricks was in the vehicle when Kurtel Walker got
15 in. Nobody can say how much money was actually
16 stolen from Mr. Degraffenried, he didn't testify.
17 If you remember the first witness from
18 Rent-a-Center, he didn't know how much money was
19 taken. And the last witness we heard from, all he
20 could tell you was how much money was being
21 deposited or was supposed to be deposited that day.
22 There is no evidence from Mr. Degraffenried how
23 much money was taken from him. There is only
24 evidence that money was recovered at a later time
25 from Mr. Ricks, in an amount over three thousand

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2 both parties, prior to their summations, that I
3 will submit to the jury for it's consideration the
4 following counts, which would now be count one:
5 robbery in the first degree, and count three:
6 criminal possession of stolen property in the third
7 degree. Are there any requests to charge any other
8 or any lesser included offenses?

9 MR. MCHALE: None for the People.

10 MR. D'AMICO: Judge, I would request criminal
11 possession of stolen property in the fifth degree.
12 Again, just reiterate, regarding the value of the
13 stolen property, I don't think they have proven
14 that three thousand dollars or more was actually in
15 possession of Mr. Ricks, of knowingly stolen
16 property. I believe that the evidence could lead
17 the jury to find that perhaps he was in possession
18 of some stolen property and the possession fifth
19 would allow there to be no monetary value.

20 THE COURT: Do you want to say anything?

21 MR. MCHALE: I don't think as a matter of law,
22 Judge, that I would -- could pose any legal
23 argument to that.

24 THE COURT: No, there is no factual way that
25 that would be a valid charge, under the evidence as

BROWN - CROSS

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2 Q. And would it be fair to say as you were following
3 the car you didn't see anything get thrown out of the window?

4 A. Nothing.

5 Q. Did you frisk Mr. Ricks at 30 Pheasant Run?

6 A. Yes, I did.

7 Q. Didn't find anything on him?

8 A. No, I didn't.

9 Q. And, in your training, obviously you were
10 instructed on how to do a proper frisk for officer safety,
11 correct?

12 A. Uh-hum.

13 Q. Is that yes?

14 A. Yes, I'm sorry.

15 Q. You search the pockets, correct?

16 A. Yes.

17 Q. You search their pants legs?

18 A. Yes.

19 Q. You search down around their feet and ankles?

20 A. Yes.

21 Q. Were those typically places where weapons may be
22 hid?

23 A. That's correct.

24 Q. And you did that, you did a thorough frisk of Mr.
25 Ricks at that point in time?

BROWN - CROSS

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A. That would be correct.

3

Q. Four or five other vehicles on the scene?

4

A. Yes.

5

Q. How many officers?

6

A. How many officers? Six I believe.

7

Q. And as you sit there, today, you can't tell us
8 what each individual officer was doing while you were
9 searching that car, is that a fair statement?

10

A. That's correct.

11

Q. Now, after -- about how long did it take you to
12 search that vehicle?

13

A. Maybe five minutes.

14

Q. Did you search it by yourself or did someone help
15 you?

16

A. Myself and Detective Sergeant Brown.

17

Q. And after you searched that vehicle, is it at
18 that time that you received the instruction to return to the
19 Bailey Kensington area?

20

A. Yes, sir.

21

Q. And again at this point, you don't place Mr.
22 Ricks under arrest, right?

23

A. That's right.

24

Q. Did you place him in handcuffs?

25

A. Yes.

BROWN - CROSS

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Q. Behind his back?

3

A. Yes.

4

Q. And you put him in the back? He was put in the back of your patrol car?

5

6

A. Correct?

7

A. Yes.

8

Q. And you returned to the Bailey Kensington, the plaza over there, 3041, correct?

9

10

A. Yes, sir.

11

Q. And when you get there, you see a bunch of other police officers, Buffalo Police correct?

12

13

A. Yes, sir.

14

Q. How many Amherst Police Officers?

15

A. There was four of us. I'm sorry five. Detective Sergeant Brown as well.

16

17

Q. And the other cars, had the other individuals that were removed from the vehicle at 30 Pheasant Run?

18

19

A. Yes, sir.

20

Q. So the four individuals, so the jury understands, the four individuals that were removed from the vehicle at 30 Pheasant run were all transported to Buffalo in a separate vehicle?

21

22

23

24

A. In separate vehicles, yes.

25

Q. In separate vehicles, in separate Amherst Police

BROWN - CROSS

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1 A. Yes, I did.

2 Q. And you didn't find anything on him at that time?

3 A. No, I did not.

4 Q. You placed him in the back of your patrol car?

5 A. Yes.

6 Q. There were other officers on the scene?

7 A. Yes.

8 Q. Did other officers have access to your patrol
9 car? Could they have gone to the window and spoken to Mr.
10 Ricks?
11

12 A. Could they have? Yes.

13 Q. Could they have opened the door?

14 A. Yes.

15 Q. Could they have moved him out of your vehicle, at
16 any period of time without your knowledge, given that you
17 were searching another vehicle?

18 A. No, I was within thirty feet of my car.

19 Q. Well, if you were looking in and searching a
20 vehicle, obviously your attention would be focused on the
21 vehicle you were searching, would that be a fair statement?

22 A. Yes.

23 Q. So it would be fair to say that your attention
24 was not on your own vehicle, for that whole period of time,
25 right?

BROWN - DIRECT

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A. That's correct.

Q. And what was your understanding as to who that was?

A. Mr. Walker.

Q. What in terms of Mr. Walker, what did your search of him reveal?

A. Once I confronted him that he was positively ID'd as the party that committed the crime, he admitted to having the --

MR. D'AMICO: Objection, Judge.

Q. Let me - let's talk about, if we can confine the remainder of your testimony to what you found on his person?

A. Okay, two checks, two current receipts and I believe the two black bags.

Q. Showing you, Officer, what has been marked as People's number 5 for identification, do you recognize the four items contained within that sealed container?

A. Yes, sir.

Q. What do you recognize them to be?

A. The property that was in Mr. Walker's shoe.

Q. And to the best of your recollection, are those the exact items that in fact you took out of that shoe on June the 28th of last year?

A. Yes, sir.

1 A. No.

2 Q. Just you and Mr. Ricks?

3 A. Yes.

4 Q. He was placed in the back seat?

5 A. Yes, sir.

6 Q. Taking you back again to the scene. Once

7 the individuals were taken back to Bailey Avenue, did you

8 then, after they were formally placed under arrest, did you

9 search the back of your vehicle?

10 A. Yes.

11 Q. What did you find at that point, Officer?

12 A. Three thousand four hundred eighty-eight

13 dollars underneath the back seat which Kurtel was sitting.

14 Q. Now, Officer, before you begin each day's

15 shift -- actually, let me phrase it this way. At what time

16 did you begin your tour of duty?

17 A. I work from 7 to 3. 7 a.m. to 3 p.m.

18 Q. Prior to beginning your shift -- you work

19 the patrol unit?

20 A. Yes, sir.

21 Q. Meaning you were in an Amherst Police

22 vehicle; you patrol the Town of Amherst?

23 A. Yes, sir.

24 Q. Prior to beginning your shift on this day,

25 or any day for that matter, is there a protocol or