

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART K-21 - QUEENS COUNTY
125-01 QUEENS BLVD, KEW GARDENS, NEW YORK 11415

P R E S E N T :

HON. DARRELL L. GAVRIN,
JUSTICE

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THE PEOPLE OF THE STATE OF NEW YORK	:	Ind: No. <u>2587/2006</u>
	:	
-against-	:	<u>Huntley</u> Hearing
	:	
ARGELIS ROSARIO	:	
	:	
Defendant	:	
<hr/>	X	

Steven Hornstein, Esq.
For the Motion

Eric Rosenbaum, ADA.
Opposed

The defendant's motion to suppress defendant's statements is denied (see Memorandum Decision, dated September 26, 2007).

Date: September 26, 2007

DARRELL L. GAVRIN, J.S.C.

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: K-21

THE PEOPLE OF THE STATE OF NEW YORK : BY: DARRELL L. GAVRIN, J
: :
: DATED: September 26, 2007
-against- : :
: INDICTMENT NO: 2587/2006
: :
ARGELIS ROSARIO : :
: :
Defendant : :

The defendant was indicted for three counts of Course of Sexual Conduct Against a Child in the First Degree (PL 130.75) and Endangering the Welfare of a Child (PL 260.10). A *Huntley* hearing was held on August 14, 2007 on defendant's motion to suppress statements. At this hearing, Detective Antoin Malloy was called to testify by the People. Kenner Rosario and Noe Suazo testified for the defendant. Based on the evidence adduced at the hearing, the Court made the following findings of fact and conclusions of law.

FINDINGS OF FACT

Detective Antoin Malloy, a thirteen year veteran of the New York Police Department, had been assigned to the Special Victims Unit for almost three years. On June 20, 2006, after interviewing the complainant, Christopher Rosario, he went with Detective Brian Pollack to defendant's residence at 133- 05 122nd Street in Queens County. The defendant's brother, Kenner Rosario, opened the door. He informed the officers that Argelis Rosario, the defendant, was in Philadelphia. At the detective's request, Kenner contacted the defendant on his cell phone and Detective Malloy spoke to him. Argelis Rosario agreed to return and see the officer on the following day.

At approximately 11:30 a.m. the next day, the defendant arrived at the 112th Precinct where the Special Victim's Squad is located. Detective Malloy brought him to the interview room on the second floor where he was placed under arrest, but not handcuffed. The detective left the room briefly without saying anything to the defendant. He returned with a *Miranda* sheet from which he read the defendant his *Miranda* warning. The defendant responded "Yes", and wrote "Yes" and placed his initials next to each warning, as it was read to him. Argelis Rosario then signed and dated the form, indicating the time thereon as 12:05 p.m. The detective also signed the form and advised the defendant that he was under arrest because of allegations by Christopher Rosario that the defendant had engaged in sexual contact with him.

Argelis Rosario admitted to Detective Malloy that he had engaged in oral and sexual acts with Christopher Rosario. The detective gave the defendant a pen and pad and requested that he write down what he had told him. Detective Malloy then left the room, locking the door, and returned about a half hour later. The defendant had written and signed a statement dated June 21, 2006 at 12:15 p.m. Detective Malloy asked the defendant if he would make a videotape statement and he agreed to do so.

After the defendant was fingerprinted and booked, he was placed in the locked interview room while video equipment was set up in the kitchen area of the precinct. During that time he was provided food and allowed to use the bathroom. At about 3:52 p.m., the defendant was advised of his *Miranda* rights and interviewed by Assistant District Attorney Eric Rosenbaum on videotape. This interview was concluded at 4:24 p.m.

The videotape, written statement, and signed *Miranda* form were introduced into evidence by the People.

On his behalf, the defendant called Kenner Rosario and Noe Suazo as witnesses. They testified that they were sleeping in the house located at 133-15 220th Street in Queens County on June 21, 2006. At about 6:00 a.m., they heard knocking and Detective Malloy and another officer entered through a basement door which is usually locked. The officers stated that they were looking for the defendant, Argelis Rosario. When the officers were informed that the defendant was in Philadelphia, Officer Malloy told them that the defendant was not allowed to leave the state because of a pending case involving a dog. Further, the detective stated that if Argelis Rosario did not report to the precinct by 1:00 p.m., he would be arrested and could spend 25 years in jail. After the police officers left, Kenner Rosario telephoned the defendant. He told Argelis Rosario that the police wanted to see him about the dog case and that unless he reported to the precinct by 1:00 p.m., he would face 25 years in prison.

The Court did not find the defense witnesses to be credible. Instead, the court credits the testimony of Detective Malloy which had the force and flavor of credibility. He denied that he broke into a house looking for the defendant and threatened that the defendant could spend 25 years in jail unless he reported to the precinct. The Court also credits the detective's testimony that no threats or accusations were made by him which induced defendant's oral and written statements admitting he engaged in sexual acts with Christopher Rosario.

CONCLUSIONS OF LAW

_____The People have met their burden of establishing that the oral, written, and videotaped statements made by the defendant on June 21, 2006 at the 112th Precinct were made pursuant to the defendant's knowing and voluntary waiver of his constitutional rights. The court credits the testimony of Detective Antoin Malloy that he advised the defendant of

his *Miranda* rights before questioning him and that the defendant indicated that he understood his rights and that he was willing to make a statement and answer questions, without an attorney. (See, People v. Sirno, 76 NY2d 967. The defendant was again advised of his *Miranda* rights, on video, before he was interviewed by the assistant district attorney. During that videotaped interview, he repeated the admissions he had made in the earlier oral and written statements. The videotape was viewed by the Court. It demonstrates that the defendant's statements, admitting he had sexual contacts with Christopher Rosario, were voluntarily made with a full understanding of his *Miranda* rights.

There is no credible evidence adduced in the record to indicate that the defendant was threatened or that his will was overborne. (See, People v. Tarsia, 50 NY2d 1). Furthermore, no evidence was adduced to indicate that the defendant was irrational or in any way incapable of appreciating the consequence of his statements, nor that he was subjected to overbearing interrogation (See, People v. Abreu, 184 AD2d 707 [2d dept 1992], appeal denied 80 NY2d 972 [1992]).

The court finds that the defendant's statements were given "freely and voluntarily without any compelling influence", and so are admissible in evidence (People v. Jackson, 41 NY2d 146, 151). Therefore, defendant's motion to suppress statements is denied.

Order entered accordingly.

The Clerk is directed to forward copies of this Decision and the accompanying Order to the attorney for the defendant and to the People.

Date: September 26, 2007

DARRELL L. GAVRIN, J.S.C.