SUPREME COURT, SUFFOLK COUNTY
STATE OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK

-against-

VINCENT DRAGONE,

Defendant.

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CRIMINAL TERM, PART 4

MICHAEL F. MULLEN, J.S.C.

COURT CASE NO. 1339-2005

DATE: APRIL 18, 2006

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A Huntley hearing was held in this case over two days, January 17 and 18, 2006, and, based upon the testimony and evidence offered, the Court finds the facts to be as follows:

Detective Sergeant David Tricamo, along with two other detectives, in two separate vehicles, were conducting a surveillance of defendant's home in Manorville on the morning of March 31, 2004. At about 7:35 AM, Tricamo saw defendant driving a white SUV leaving his property and approaching Silas Carter Road. Defendant turned left onto Silas Carter, without signaling, and proceeded along that road at a speed which Tricamo estimated to be about 45 miles per hour, i.e., in excess of the 30 miles per hour speed limit.

The two police cars followed for about a quarter of a mile - Tricamo and Detective Mammone were in one and Detective Carty was driving the other - and pulled defendant over. Tricamo and Mammone pulled in front, and Carty pulled directly behind

defendant. Tricamo identified himself and the other detectives and told defendant they wanted to speak to him about something important. Defendant asked what it was about? Mammone replied there were serious allegations being made in Brookhaven, and they felt defendant could help them. Defendant asked where they had to go, and they told him to their office in Hauppauge. Defendant got in with Tricamo and Mammone, and Carty drove defendant's Brookhaven Town car to their office.

The trip took about thirty minutes, during which they made "small talk, small conversation," mostly about the Yankees. When they arrived at the office defendant was placed in a twelve foot by twelve foot interview room. The room had a table with three chairs, two doors, no window. Defendant was told he was not in custody, and was free to leave at any time. The keys to his SUV were placed on the table.

Detective Mammone took out two rights cards and slid one of them to defendant. The detective read the rights, and waivers. Defendant indicated he understood, responded "yes," "no" and "yes," and signed the card. Mammone added the date and the central complaint number. There followed a lengthy conversation covering such topics as defendant's family, his employment with the town, the "environment" surrounding his job, his selling tickets to campaign functions to contractors and developers, the cost, etc., surrounding the construction of his own home in the town, and of his interest in a concrete company owned by one of his friends. Detective Mammone did most of the questioning and Tricamo did the note-taking.

These topics and others were eventually included in a three page statement which was written out by Mammone starting at about 1:40 PM. Defendant signed on all three pages, and the signature was witnessed by Tricamo. Just before it was written out, Mammone read defendant his rights a second time. Defendant initialed each of the rights which appeared on the first page, wrote yes, no, and yes to the waivers and signed his name. When finished, defendant read each page out loud before signing. He was permitted to make corrections, to use his cell phone, smoke, and use the restroom as needed. He was not searched.

When the written statement was completed, according to Tricamo, defendant was not ready to leave, so he was taken to a second interview room where they were joined by a Detective Lohmann who wanted to speak to defendant about some other topics. These included the planning board, sand excavation, and the highway department. Their conversation went on for about an hour and fifteen minutes.

Detective Tricamo acknowledged that defendant was a target of their investigation when they pulled him over, and that defendant was never given any traffic tickets. He was not told he was a target.

Detective Bryan Carty was called by defendant, and his testimony was limited to the circumstances surrounding the stop of defendant as he was leaving his home on March 31. Carty claimed he was able to see that defendant was not wearing a seatbelt, did not use his directional signal and drove at an imprudent, unsafe speed, i.e., more than 45 miles per hour. None of the detectives mentioned these infractions to the defendant. The "agreement" among the detectives was that Carty would pull defendant over only if he committed a traffic violation. Otherwise, they would wait until he arrived at some destination and got out of his car.

Conclusions of Law

At the start of the hearing, defense counsel called attention to the fact that the People's 710.30 notice made mention only of a written statement, which was attached, and which was allegedly given by his client at a specific time and place. There was no mention of any statements, oral or written, other than the one attached. Counsel made it clear that by participating in the hearing he was not giving up his right to preclude any statement not noticed.

In his post-hearing memorandum defense concedes, and correctly, that any oral statement which is "substantially the same" as that found in the written version would satisfy the requirements of CPL 710.30 (see, ***People v Cooper***, 78 NY2d 476, 484; ***People v Bennett***, 56 NY2d 837, 839).

Here, the oral and written statements made to Detective Mammone are admissible. The credible evidence shows that defendant was informed of his Miranda rights from a card. He indicated he understood, responded to the waivers and signed the card. Mammone and defendant then engaged in a lengthy conversation which was subsequently included in a three page written statement. Defendant was reminded more than once that he was not under arrest and was free to leave at any time. Before taking the statement, Mammone again advised defendant of his rights; this time from the pre-printed statement form. Defendant initialed each of the rights, wrote his responses to the waivers, and signed his name. The People have shown beyond a reasonable doubt that defendant was aware of his rights and knowingly, voluntarily, and intelligently waived them (see, ***People v Witherspoon***, 66 NY2d 973).

Defendant's motion to preclude the oral statements made to Detectives Tricamo and Lohmann after the written statement was taken, is granted. The defense did not receive adequate notice of these statements pursuant to CPL 710.30. On July 1, 2005, defense

counsel filed a discovery demand seeking disclosure of any and all oral statements. According to the People's response, dated September 14, 2005, "[t]he (written) statement ... reflects oral statements made to detectives, which resulted in the written statement." The record shows that any statements made by defendant after the written statement were made after the defendant was brought to another room, was introduced to another detective, and was then questioned about topics other than the ones contained in the written statement. There was no reference to them in the 710.30 notice.

Further, under the circumstances here, defendant's participation in the Huntley hearing did not function as a waiver of his right to preclude. In the discovery demand, the defense simply made a request for a Huntley hearing; not a motion to suppress (see, CPL710.30[3]; ***People v Lopez***, 84 NY2d 425).

The foregoing constitutes the decision and order of the Court.

DATED: April 18, 2006

Michael F. Mullen

HON. MICHAEL F. MULLEN, J.S.C.