

**People v Macfarlane**

2007 NY Slip Op 34006(U)

October 11, 2007

Suffolk County Ct

Docket Number: 0002450/2005

Judge: James C. Hudson

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*Memorandum Decision*  
**County Court of the State of New York**  
**Part 7 - Suffolk County**

**PRESENT:**

**Hon. JAMES HUDSON**

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**PEOPLE OF THE STATE OF NEW YORK,**

**Plaintiff,**

**DATED: October 11, 2007**  
**INDICTMENT NO.: 02450-2005**

**-against-**

**ELDEN MACFARLANE,**

**Defendant.**

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HON. THOMAS J. SPOTA  
Suffolk County District Attorney  
JANET ALBERTSON, ESQ., Assistant District Attorney  
Criminal Court Building  
200 Center Drive  
Riverhead, New York 11901

BRACKEN & MARGOLIN, LLP  
By: WILLIAM T. FERRIS, III, ESQ.  
One Suffolk Square – Suite 300  
1001 Veterans Memorial Highway  
Islandia, New York 11749-1543

Mr. Macfarlane's motion to suppress evidence was granted to the extent that a hearing on the propriety of the defendant's arrest and alleged statements was set down. Additionally, the Court directed a hearing to decide if physical evidence was properly seized.

The People called SCPD Police Officer John Terravecchia and Detective Vincent Stephan to the stand. After listening to their testimony and observing their demeanor, we find their statements to be in all respects forthright, reliable, consistent and, hence, credible. The Court's subsequent findings are based on this estimation of the People's witnesses.

We first analyze whether Mr. Macfarlane's arrest was on the basis of probable cause. Police Officer Terravecchia testified, *inter alia*, that on October 21st, 2005, he was on patrol with his partner when a radio call came in to go to a home on West Drive in Bayshore. There was a report called in by a child that her mother had been killed by her father. Police Officer Terravecchia pulled up to 6 West Drive and observed the defendant sitting on the front porch smoking a cigarette. The defendant had blood on his shirt and hands. In response to Officer Terravecchia's initial question, "What's going on?" the defendant replied that he had had a fight with his wife and that he hadn't taken his medication. Looking past the defendant, the Officer then saw a knife on the floor just inside the doorway. He went into the residence to see if Mrs. Macfarlane needed help and found her lying on a couch. He observed a stab wound on her neck and cuts

**PEOPLE V. MACFARLANE**  
**INDICTMENT NO. 02450-2005**

on her hands. She had no pulse. Police Officer Terravecchia returned to the front door and nodded to his partner, who placed Mr. Macfarlane in handcuffs. The clothing that the defendant was wearing, as well as the knife, were seized without a warrant.

Detective Stephan testified that he met the defendant in the 3rd Precinct interview room. The defendant was transported to the 3rd Precinct where Det. Stephan interviewed him. Prior to this interview taking place, the defendant was advised of his constitutional rights (People's Exhibit #7).

Thereafter, Mr. Macfarlane was brought to Police Headquarters. While being transported, the defendant made certain statements to the witness, including words to the extent that he had a fight with his wife and may have stabbed her. After arriving at headquarters, the defendant stated, "I'll kill all you guys" in the presence of Detectives Stephan, Mercer, Hughes and Murphy. Once in the Homicide Squad interview room, the defendant was asked questions concerning the death of his wife. Mr. Macfarlane responded that they had had an argument over losing a file and at some point, he had taken a knife and stabbed his wife "a few times." The defendant also said that his wife's daughter was present during the occurrence but that "I didn't stab her." The defendant declined to give a written statement and eventually terminated the interview by asking for an attorney.

Initially, the Court will decide the question of Mr. Macfarlane's arrest. The People have the burden of presenting clear and convincing evidence that the defendant's arrest was based on probable cause (*People v. Mink*, 237 A.D.2d 664, 655 N.Y.S.2d 115 [3rd Dept., 1997]; *People v. Travis*, 162 A.D.2d 807, 557 N.Y.S.2d 975 [3rd Dept., 1990]). A review of the proof demonstrates that this question must be answered emphatically in the affirmative. Mr. Macfarlane's bloody hands, the initial admission and the presence of the decedent's body all supply ample justification for the defendant's arrest (*People v. Davis*, 144 A.D.2d 379, 533 N.Y.S.2d 965 [2nd Dept., 1988]; *People v. Pedreira*, 143 A.D.2d 778, 533 N.Y.S.2d 481 [2nd Dept., 1988]).

We now turn to the question of the warrantless entry of Mr. Macfarlane's home, and the seizure of his clothes and knife. In contrast to the presumptive validity of a search and seizure pursuant to a warrant, a seizure without this *imprimatur* invokes the jaundiced scrutiny of the Court (*People v. Hodge*, 44 N.Y.2d 553, 406 N.Y.S.2d 736 [1978]). There are two exceptions to the requirement for a warrant, however, and both are present in the matter at hand—plain view and exigent circumstances.

In order to satisfy the emergency or public safety exception to the rule that a warrant is a necessary prerequisite to a search, the People must prove that "1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, 2) the search must not be primarily motivated by intent to arrest or to seize evidence, and 3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched (*People v. Mitchell*, 39 N.Y.2d 173, 177-178, 383 N.Y.S.2d 246, *cert. denied* 426 U.S. 953, 96 S.Ct. 3178 [1976]).

**PEOPLE V. MACFARLANE**  
**INDICTMENT NO. 02450-2005**

Applying this doctrine, Police Officer Terravecchia was presented with the following facts, a radio call concerning a homicide at a particular location, and the defendant's posture (i.e. statement and bloody hands) at the *locus in quo*. The Officer was certainly justified under the circumstances in entering the dwelling to ascertain if the decedent was alive and capable of being helped.

The knife, as well as Mr. Macfarlane's clothes, being in plain view, were also properly seized in the absence of a warrant (*People v. Thomas*, 188 A.D.2d 569, 591 N.Y.S.2d 464 [2nd Dept., 1992], *lv. app. denied* 81 N.Y.2d 1021, 600 N.Y.S.2d 209 [1993]).

We now address the question of the admissibility of the statements allegedly uttered by the defendant. "At a hearing to consider suppression of a defendant's statement, the People must prove beyond a reasonable doubt that the statement was voluntary to permit its admission into evidence before the jury on the People's case-in-chief" (*People v. Anderson*, 69 N.Y.2d 651, 511 N.Y.S.2d 592 [1986]); *People v. Witherspoon*, 66 N.Y.2d 973, 498 N.Y.S.2d 789 [1985]).

Initially, the Court must insure that the statement was not coerced or otherwise produced in an involuntary manner. There was not a scintilla of proof adduced at this hearing which could form the basis of a conclusion that the defendant's statement was involuntary or in any respects coerced. His initial response to the question of Police Officer Terravecchia at his home was outside the purview of *Miranda* (*Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 3140 [1984]). Thereafter, he was properly advised of his *Miranda* rights prior to speaking with the Police Detectives and the aforementioned interview taking place. Accordingly, the People have met their burden and shall be able to present this evidence (with the exception noted *infra*) before the jury at the trial of this case.


The sole remaining area of discussion concerns the People's intent to use the statement allegedly made by Mr. Macfarlane at the elevator in Police Headquarters, specifically "I'll kill all you guys." It is beyond cavil that this statement was voluntary and spontaneous. The People seek to introduce this statement on their direct case and during cross-examination of the defendant's mental health expert on the basis that, "The aforementioned statement of the defendant, under the circumstances in which it was made, is relevant and probative on the issue of intent, the defendant's ability to formulate the intent to kill and on issues relating to the defendant's ability to appreciate the nature and consequences of his actions..." (People's letter to the Court dated September 18th, 2007).

Defense counsel argues that this statement, relating to a possible homicide in the future, could only be used to impermissibly demonstrate a murderous propensity on the part of Mr. Macfarlane (*People v. Condon*, 26 N.Y.2d 139, 309 N.Y.S.2d 152 [1970]). We agree. Contrary to the People's eloquently expressed position, the statement in question does not bear on the specific intent to murder Ms. Macfarlane. Therefore, the People will only be permitted to use same if the defendant affirmatively places the subject into issue, such as through character evidence or the testimony of a psychiatrist who asserts that the defendant was not capable of forming the requisite intent for murder or gives testimony as to the

**PEOPLE V. MACFARLANE**  
**INDICTMENT NO. 02450-2005**

defendant's specific state of mind. Absent such affirmative behavior on the part of the defense, however, this particular statement shall be kept from the jury's purview.

This memorandum constitutes the decision and order of the Court.



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**JAMES HUDSON**  
**J.C.C.**