

**People v Trovato**

2007 NY Slip Op 34548(U)

September 13, 2007

Supreme Court, Westchester County

Docket Number: 06-1047

Judge: Barbara G. Zambelli

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FILED  
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ON 9/13 2007  
WESTCHESTER  
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----x

THE PEOPLE OF THE STATE OF NEW YORK

- against -

ANNE TROVATO,

Defendant.

-----x

ZAMBELLI, J.

Indictment No: 06-1047

DECISION AFTER HEARING

Defendant has been indicted for the crimes of murder in the second degree (two counts), burglary in the second degree, and criminal possession of a weapon in the fourth degree (two counts) allegedly committed on or about and between May 11, 2006 and May 14, 2006 in the County of Westchester. By decision and order dated January 26, 2007, this Court ordered Wade and Huntley hearings.

Hearings before trial were held on September 10, 2007 wherein Retired Detective Thomas Reddy of the Village of Ossining Police Department gave testimony. The Court denied Defendant's motion to suppress all noticed identifications on the grounds that each identification was merely confirmatory.

FINDINGS OF FACT

The credible testimony before the Court established that on May 14, 2006, Detective Reddy was investigating the homicide of Patricia Mery. At approximately 10:00 p.m., the Detective met with the defendant. The defendant had appeared in Ossining Police

Headquarters. She had not been asked by a member of the police department to appear there. She went to the desk officer who contacted Detective Reddy in the Detective Division. Defendant was brought upstairs to the Detective Division. This was the first time Detective Reddy met the defendant. Defendant, Detective Reddy and Detective See went into the interview room. The room is approximately 12 feet by 10 feet with a table and chairs. There is a 3 foot by 4 foot framed Miranda warning on the wall. The detectives were in plain clothes. They introduced themselves to the defendant and expressed their condolences for her loss. Detective Reddy told her he would be asking her some questions since they were assigned to investigate the case. The defendant was quiet, calm, showed little emotion, almost lethargic. She was on several medications including Valium and Zoloft. She proceeded to make the statements contained in sum and substance in the People's CPL 710.30 notice. She was offered food but declined. The questions were calmly asked. There was no shouting. There was no evidence of force or coercion. At approximately 11:30 p.m. the detectives learned from Detective Apostolico that a keychain found at the crime scene belonged to the defendant and that there was a photo of a white blonde female who made a call from a phone at the train station to Child Protective Services the night before, a call Defendant had denied making during the course of her interview with the police. At that point, 11:37 p.m., Defendant was read each of her Miranda rights from People's Exhibit 97 in evidence. She acknowledged orally and in writing that she understood each of her rights and that she would answer questions. The detective told her about the keychain and that there had been a video at the train station at which point she stated she wanted a lawyer. All questioning ceased. Defendant went downstairs in police headquarters where Carmela Magnetti, the co-defendant herein, was

waiting. She left with Carmela Magnetti at approximately 11:47 p.m.

CONCLUSIONS OF LAW

The standard for analyzing whether a statement made prior to the administration of Miranda warnings was the product of custodial interrogation is what a reasonable man, innocent of any crime, would have thought had he been in the defendant's position (People v. Yuki, 25 NY2d 585; People v. Centano, 76 NY2d 837).

The facts clearly established that Defendant was not in custody at any time. She appeared on her own and evidently unexpectedly at police headquarters. She was not restrained in any manner. There was no force or coercion. Thus, her statements prior to Miranda warnings were not the product of custodial interrogation. (See, People v. Dillhunt, 41 AD3d 216, 839 NYS2d 18.) However, the People are prohibited from introducing Defendant's invocation of her right to counsel on their case-in-chief and the question which led to the invocation of that right (see, People v. Hunt, 18 AD3d, 891; People v. Knowles, 42 AD3d 662).

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
September 13 2007



BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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