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| <b>People v Baptiste</b>                                                                                                                                                                                                                                         |
| 2007 NY Slip Op 34579(U)                                                                                                                                                                                                                                         |
| April 14, 2007                                                                                                                                                                                                                                                   |
| County Court, Westchester County                                                                                                                                                                                                                                 |
| Docket Number: 07-1077                                                                                                                                                                                                                                           |
| Judge: James W. Hubert                                                                                                                                                                                                                                           |
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COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

CARLOS JEAN BAPTISTE, LLOYD BRAHAM,  
WARREN DAVIS and ANDREW CREWE

Defendants.

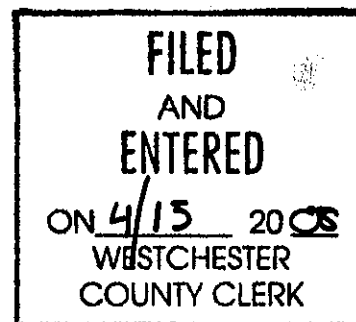
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HUBERT, J.

The defendants in this case are charged under Westchester County Indictment No. 07-1077 with various counts of Murder in the Second Degree, Robbery in the First Degree, Burglary in the First Degree, and Criminal Possession of a Weapon in the Second Degree. Defendant Baptiste was also indicted for the crime of Murder in the First Degree for having shot and killed Neville Brett during the course of a robbery at his apartment on June 29, 2007, in Mt. Vernon.

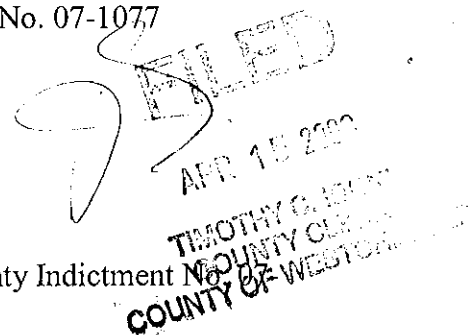
Each defendant made a statement to the detectives assigned to the case implicating, to various degrees, the other defendants. All defendants move to suppress their statements on the grounds that they were elicited in derogation of *Miranda* requirements and/or the fruit of illegal police conduct. Braham also contends that the police arrested him in violation of *Payton v. New York*, 445 U.S. 573 (1980) and its progeny.

At the suppression hearing, the People called five detectives from the Mt. Vernon police department who handled the investigation. Defendants Davis and Braham testified on their own



# DECISION

Indictment No. 07-1077



behalf, and Defendant Davis called an additional witness, Krystal Braham. Based on the testimony adduced at the hearing, the Court makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

The testimony of Detective George Ossipo established that on or about July 25, 2007, he interviewed Krystal Braham as part of his investigation into the death of Neville Brett. Ms. Braham came to police headquarters with her mother at approximately 1:00 a.m. Ms. Braham revealed that Warren Davis, the father of her child, confided in her that Braham, Baptiste, other individuals and he were involved in a gun-point robbery of a marijuana dealer who resided at 138 West 4<sup>th</sup> Street in Mt. Vernon. Ms. Braham further stated to the detective that Davis told her that they had entered the victim's apartment with the intention of stealing marijuana and cash, that one of the co-defendants shot and killed Neville Brett during the course of the robbery, and that all then fled the location. Davis told her that he was involved but had remained outside, and that he was not the shooter.<sup>1</sup>

Detective Ossipo's testimony further established that on July 26, 2007 at approximately 7:08 p.m., he and Detective Anthony Mitchell observed Davis walking southbound in the vicinity of 64 West 4<sup>th</sup> Street in Mt. Vernon and took him into custody for questioning. He was transported to the Mt. Vernon Police Department headquarters, where he was placed in an interview room.

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<sup>1</sup>During the course of their investigation, Detective Ossipo or other detectives also spoke to Lloyd Braham's aunt and Baptiste's own mother, who each confirmed that there were rumors about Braham and Baptiste's involvement in the crime. Krystal Braham's sister, Nikesha Plummer, also told detectives that Braham and Baptiste had been planning to rob Michael Brett, the victim's brother.

At approximately 7:37 p.m., Detective Ossipo read Davis his *Miranda* warnings from a pre-printed form.<sup>2</sup> Detective Mitchell was also present in the room. Davis indicated that he understood each right, signed the *Miranda* form, and checked off two boxes indicating that he understood the rights printed on the form and was willing to speak to the detectives.

At the time that Davis was advised of his *Miranda* warnings and subsequently interviewed, he was seated at the end of a table and handcuffed to a post in the room. Davis was interviewed at length, and made a full confession, implicating himself and the co-defendants in the crime. During the interview, Detective Ossipo showed Davis a photograph of Carlos Jean Baptiste and Lloyd Braham. Davis identified them as participants in the crime and informed the detectives of their respective roles.

This portion of the interview lasted approximately three hours and twenty minutes. Immediately thereafter, at approximately 10:57 p.m., Detective Ossipo decided to videotape the defendant's statement using a video/audio camera that was concealed in the room. He briefly left the room to activate the camera. After doing so, Detective Ossipo returned and re-read Davis the *Miranda* warnings from a pre-printed form. Davis again indicated he understood each right and was willing to continue speaking to the detectives. Davis never indicated that he wanted to speak to a lawyer. Detective Ossipo never informed Davis that his statements were being recorded, and it does not appear from the record that Davis knew that he was being taped.

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<sup>2</sup>Davis informed the detective that he had a problem with his sight. When asked if he (Davis) could read the form, Davis replied that he could. Davis further indicated that he could read and write.

The taped interview concluded at approximately 11:30 p.m. on July 26, 2007, at which time Davis was taken from the room, booked, and placed in a cell in another part of the building.<sup>3</sup>

Based upon the statements obtained from Davis, as well as the information previously provided by Krystal Braham, defendant Carlos Jean Baptiste was taken into custody on July 27, 2007, at approximately 6:45 p.m. He was transported to the Mt. Vernon Police Department headquarters, where he was placed in the same room where Davis had been interviewed the previous day. At approximately 7:08 p.m., Detective Ossipo read Baptiste his *Miranda* warnings from a pre-printed form. Detective Mitchell was present in the room. Baptiste indicated that he understood each right, signed the *Miranda* form, and checked off two boxes indicating that he understood the rights printed on that form and was willing to speak to the detectives.

At the time that Baptiste was advised of his *Miranda* warnings and subsequently interviewed, he, like Davis, was seated at the end of a table and handcuffed to a post in the room. For a period of time, he denied any involvement in the crime. However, Detective Ossipo told Baptiste that Davis had already been arrested and was present in the building. Baptiste expressed disbelief, and Detective Ossipo asked Baptiste if he would tell the truth if he saw Davis. At approximately 10:15 p.m., detectives brought Davis to the room where Baptiste was being held. Davis and Baptiste spoke to each other in a Jamaican accent that Detective Ossipo could not fully understand. Baptiste then requested a special cigar, which the police bought and gave to him. At approximately 10:50 p.m., Baptiste told Detective Ossipo that he was the triggerman and made a full confession. At approximately 11:40 p.m., Detective Ossipo decided

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<sup>3</sup>The Court reviewed the videotape during the hearing. Davis reiterated his prior admissions with respect to the crime.

to videotape Baptiste's statement. He re-issued the *Miranda* warnings, and Baptiste made another statement—unbeknownst to him—on videotape. He was then placed in a holding cell.

Detective Ossipo further testified that on July 29, 2007 at approximately 6:45 p.m., Detectives Soreca and Baia took Lloyd Braham into custody in the vicinity of 64 West 4<sup>th</sup> Street in Mt. Vernon. Braham was transported to headquarters and placed in the conference room at approximately 7:00 p.m. At the time of his arrest, he had been with another person by the name of Christopher Wright. Detective Roberto Boncardo was also present in the room. Braham was advised of his rights by Detective Ossipo in the same fashion as the other defendants, using a standard *Miranda* form that Braham signed at 7:18 p.m. After Detective Ossipo told Braham that he had been identified in the criminal investigation, Braham made a detailed statement naming his accomplices and describing the guns that had been used. At 8:25 p.m., Braham repeated his statement on videotape. Like his co-defendants, Braham was never informed that he was being recorded, although Detective Mitchell told Ossipo that Braham thought that the room had a recording device, and later asked to speak to Detective Mitchell in another room because of that.

Detectives also attempted to locate Crewe, who had an outstanding federal warrant from the Eastern District of Pennsylvania. On August 16, 2007, at approximately 6:00 p.m., detectives took Crewe into custody after they saw him driving a green Lincoln Navigator in Mt. Vernon. Detective Ossipo was off duty at the time and arrived at police headquarters at approximately 8:30 p.m. Although Detective Boncardo had previously read Crewe his rights

and obtained Crewe's verbal agreement to cooperate, Crewe had refused to sign the *Miranda* form. Detective Boncardo did not question him, but instead awaited Ossipo's arrival.

Upon arrival, Detective Ossipo told Crewe that he would not speak with him unless he signed the form; Crewe complied by signing the form. After having informed Crewe that he was a suspect in the homicide, Crewe first denied involvement, but later made a full statement, implicating the co-defendants in the crime. The inculpatory statement was made at approximately 11:00 p.m. At 12:22 a.m. on the following date, Detective Ossipo, following the pattern of the prior interrogations, interviewed Crewe on videotape. As with the others, Crewe was not told he was being recorded.

Detective Enzo Baia testified that on July 29, 2007, at approximately 6:45 p.m., he was looking for Lloyd Braham along with Detective Soreca and Police Officer Stavace, based on the information that Detective Ossipo had developed. Detective Baia saw Braham through an open garage door of a residence at 64 West 4<sup>th</sup> Street. They approached the garage with their guns pointed at the ground, concealed behind their legs. The detectives never pointed their guns at Braham.

Braham was in the garage with a friend. Detective Soreca asked if he was Lloyd Braham, to which he replied yes. Braham exited the garage and the detectives took him into custody, advising him that he was a suspect in a homicide. He was placed into the interview room at police headquarters.

That same date, on July 29, 2007, Detective Baia also asked Christopher Wright to come to police headquarters. Wright appeared at the station and was asked if he knew Davis and

Baptiste. Wright said yes. Detective Baia showed Wright a photograph of Davis and Baptiste and had Wright initial the photos and write their names, as he knew them, on the photographs.

Detective Anthony Mitchell testified that on July 27, 2007, he was in police headquarters when someone mentioned that Davis wanted to speak to him. Detective Mitchell knew Davis from working as a school resource officer in Mt. Vernon. Davis told Detective Mitchell that he wanted to give him more information about the crime but did not want to talk in the conference room because he thought there was a recording device in it. In Detective Mitchell's office in the Youth Bureau, Davis told him about Crewe's participation in the crime.

Detective Roberto Boncardo testified about his participation in the August 15, 2007 arrest of Crew and his involvement in other aspects of the investigation.

Defendant Lloyd Braham testified that he was in a garage at 64 West 4<sup>th</sup> Street with the garage door open at about 6:40 p.m. with a friend when he saw a "detective car" pull up. He stated that three detectives exited the car and pulled out their guns from their holsters. They walked directly to the garage, pointing their guns at the garage. Braham testified that he stepped out of the garage because there was a gun pointed at him and he had no choice. At the Mt. Vernon police headquarters, Braham stated that he was strip-searched by an unidentified police officer. Braham stated that he told that unidentified officer that he wanted to speak to his attorney. According to Braham, Detective Ossipo told him that he would call the District Attorney and tell her that he was cooperating, and Ossipo promised to "get rid of" Braham's pending probation and get him "a year." Braham further testified that he never read the *Miranda*

form and that he told Detective Ossipo that he wanted a lawyer. Braham also denied making a statement to Detective Mitchell in the Youth Bureau.

Defendant Warren Davis testified that he signed the *Miranda* form without reading it and that the police told him to sign it and not to worry about it. Davis stated that the police promised to speak to the District Attorney and only charge him with attempted robbery. He further claimed to have asked to speak to an attorney when Ossipo interviewed him.

Krystal Braham was called as a witness by defendant Warren Davis. According to her testimony, she told the police that she did not want to answer questions, but the police told her that they would take her son away and she would be arrested for conspiracy if she didn't cooperate. Only then did she provide a statement about what she had heard about the crime.

## II. CONCLUSIONS OF LAW

### A. Probable Cause

The defendants each argue that they were not arrested on probable cause and that, as a result, their statements to law enforcement officials should be suppressed. Davis also claims that Krystal Braham appeared at police headquarters under false pretenses and that her statement was coerced. As a result, Davis claims that his statements should be suppressed as the fruit of an unlawful arrest.

At a *Dunaway* hearing, the People have the burden of going forward to demonstrate that the arrests were supported by probable cause. *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248 (1979). "Probable cause does not require proof sufficient to warrant a conviction beyond a reasonable doubt but merely information sufficient to support a reasonable belief that an offense

has been or is being committed or that evidence of a crime may be found in a certain place” and that the person being arrested committed the crime or offense. *People v Bigelow*, 66 N.Y.2d 417, 497 N.Y.S.2d 630 (1985); *People v McRay*, 51 N.Y.2d 594, 435 N.Y.S.2d 679 (1980).

The credible evidence adduced at this hearing has clearly established that Krystal Braham<sup>4</sup> told Det. Ossipo on July 25, 2007, that Davis confided in her the day following the crime that Davis, Baptiste, Lloyd Braham and at least one other individual were involved in a homicide. The information obtained from Krystal Braham, who was related to each of the men she named, clearly gave the police probable cause to arrest them. Information provided by an identified citizen accusing another individual of the commission of a specific crime is sufficient to provide the police with probable cause to arrest. *People v. Hurteau*, 19 A.D.3d 878, 797 N.Y.S.2d 618 (3d Dep’t 2005); *People v. Williams*, 301 A.D.2d 543, 753 N.Y.S.2d 377 (2d Dep’t 2002); *People v. Phillips*, 281 A.D.2d 495; 721 N.Y.S.2d 679 (2d Dep’t 2001); *People v. Grimes*, 191 A.D.2d 745, 594 N.Y.S.2d 392 (3d Dep’t 1993).

Davis’ statements on July 26 and July 27, 2007 detailed both his and his co-defendant's participation in the crime, providing an additional basis upon which to arrest his co-defendants, including Crewe, who drove the defendants to and from the location of the crime and provided the weapons. It is well settled that a statement of an accomplice which implicates another in criminal activity provides the police with probable cause to arrest the other individual. *People v. Berzups*, 49 N.Y.2d 417, 426 N.Y.S.2d 253 (1980); *People v. Luciano*, 43 A.D.3d 1183, 843

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<sup>4</sup>According to the hearing testimony, Krystal Braham is a cousin of Carlos Jean-Baptiste and Lloyd Braham, and she has a child in common with Warren Davis.

N.Y.S.2d 153 (2d Dep't 2007)(police had probable cause to arrest defendant on the basis of statements implicating him in the crime by his accomplices, one of whom defendant previously had identified to the police as having information regarding the crime); *People v. Johnson*, 7 A.D.3d 732, 777 N.Y.S.2d 190 (2d Dep't 2004)(probable cause to arrest defendant based on accomplice's statements implicating him in the robbery); *People v. Sturiale*, 262 A.D.2d 1003, 693 N.Y.S.2d 374 (4th Dep't 1999)(statement of an admitted accomplice of defendant provided probable cause to arrest defendant; reliability of the accomplice was demonstrated by the fact that the statement was against his penal interest); *People v. Williams*, 260 A.D.2d 513, 688 N.Y.S.2d 212 (2d Dept 1999); *People v. Butler*, 201 A.D.2d 662, 608 N.Y.S.2d 263 (2d Dep't 1994)(police had probable cause to arrest the defendant based upon the statements of surviving victim and one of the defendant's accomplices, both of whom named him as a perpetrator).

Davis' argument that the police improperly elicited the incriminating statements from Krystal Braham lacks merit. Based on the credible testimony, Krystal Braham voluntarily appeared at Mt. Vernon police headquarters to speak to Detective Ossipo, and her statements were not coerced or otherwise illegally obtained. Even assuming that the police had improperly elicited incriminating statements from her, however, such statements would still provide a legal basis for his arrest. *People v. Henley*, 53 N.Y.2d 403, 442 N.Y.S.2d 428 (1981); *People v. Michalek*, 194 A.D.2d 568, 598 N.Y.S.2d 565 (2d Dep't 1993)(information provided by defendant's companion gave police probable cause to arrest the defendant; defendant lacks standing to assert that police improperly elicited the incriminating statements from his companion); *People v. Williams*, 115 A.D.2d 627, 496 N.Y.S.2d 285 (2d Dep't 1985)(probable

cause to arrest defendant based on statements made by two individuals arrested prior to defendant's apprehension who implicated him in the murder; defendant lacks standing to challenge the use of those statements as the basis for his arrest, even assuming they were unconstitutionally obtained); *People v. Thomas*, 103 A.D.2d 854, 478 N.Y.S.2d 369 (2d Dep't 1984) (defendant lacks standing to contest use of informant's statement as basis for his arrest, even if unconstitutionally obtained).

B. Admissibility of the Defendants' Statements

The defendants allege various grounds for the suppression of their statements. All allege a lack of knowing and voluntary waiver. Additionally, defendants Davis and Braham seek suppression because they had invoked their right to counsel. Davis further alleges he was detained for an excessive period of time. Finally, all defendants claim that their rights were violated because they were unaware and not informed that certain of their statements to Detective Ossipo were being tape recorded.

The evidence at the hearing established the legality of the police conduct and the voluntariness of each of the defendants' waivers. The credible testimony adduced at the hearing supports the conclusion that each defendant received and comprehended repeated *Miranda* warnings, and voluntarily waived his rights and agreed to speak with the detectives. Detective Ossipio used a standard *Miranda* waiver form with each defendant, read each defendant his rights, had the defendant fill out pedigree information and sign the form in his own handwriting. Each defendant was questioned in a sizable room that was in no sense secluded. No coercive tactics or deprivations were employed, the questioning appeared to be calm, and there were no

factors indicative of involuntariness. *People v. Warren*, 300 A.D.2d 692, 750 N.Y.S.2d 670 (3d Dep't 2002), *lv. den.* 99 N.Y.2d 621 (2003). Moreover, Davis' statement to the police on July 27, 2007 is not subject to suppression because it was volunteered and spontaneous

The videotaped statements were preceded by another administration of the *Miranda* warnings. Although some defendants were questioned longer than others, none were questioned for an excessive period of time. Each defendant was given food and something to drink; the detectives even accommodated Baptiste's request for a specific type of cigar. *See People v. Bryan*, 43 A.D.3d 447, 842 N.Y.S.2d 29 (2d Dep't 2007)(defendant questioned for lengthy period, but was given several breaks, was provided with food and water, was not deprived of sleep, and was advised of his *Miranda* rights on three separate occasions); *People v. McWilliams*, 48 A.D.3d 1266, 852 N.Y.S.2d 523 (4<sup>th</sup> Dep't 2008) (although defendant detained and questioned by the police for 16 hours, defendant waived his *Miranda* rights, there were several breaks in the questioning, and defendant was provided with food and drink); *State v. Ponder*, 43 A.D.3d 1398, 844 N.Y.S.2d 542 (4<sup>th</sup> Dep't 2007)(no *Miranda* violation where defendant was questioned for over seven hours, but he was repeatedly offered food and drink, used cellular telephone, and there were numerous breaks in the questioning).

Moreover, there is nothing in the record to indicate that the police intentionally delayed the arraignment of any of the defendants to deprive them of their right to counsel or to continue to question them without the presence of an attorney. *People v. Ramos*, 99 N.Y.2d 27, 750 N.Y.S.2d 821 (2002). The People thus met their initial burden of establishing the legality of the

police conduct and the defendants' waiver of rights, and the defendants failed to establish that they did not waive those rights, or that the waiver was not knowing, voluntary and intelligent.

The Court notes that the tactic employed by the police of the selective and surreptitious use of a videotape to record the defendants' statements is unusual. While the legality of videotaping confessions is well established, it is usually done with the knowledge and consent of the defendant. The surreptitious and selective use of videotaping in the context of defendant interrogations is a practice that invites speculation as to why the full statement was not recorded, and why the defendant needs to be kept in the dark.

Nevertheless, it is also well established that the use of false information to induce a confession does not, in and of itself, render a confession inadmissible or involuntary. *See People v. Tarsia*, 50 N.Y.2d 1, 427 N.Y.S.2d 944 (1980) (Even though "some measure of guile" was used by police when they told the suspect "their concern was 'a possible violation of shooting' rather than the serious charge of attempted murder . . . such stratagems need not result in involuntariness without some showing that the deception was so fundamentally unfair as to deny due process or that a promise or threat was made that could induce a false confession.") (citations omitted).

Moreover, each defendant here had already made an oral statement to Detective Ossipo prior to being videotaped, so the failure to inform the defendants that they were being recorded did not in any way induce their statements. Given the totality of the circumstances, the Court therefore finds that the defendants made their statements voluntarily. None of the defendants allege that they would not have spoken with Detective Ossipo had they known that part of their

statements were being recorded. The Court has found no state or federal authority to support the argument that the defendants' video-taped statements were rendered involuntary because they were recorded without their knowledge. The few state courts to address this issue consider it to be one factor under the totality of circumstances test. *See e.g. State v. McGhee*, 2005 Ohio 1585 (Ohio Ct. App. Lawrence County Mar. 30, 2005); *State v. Winston*, 1994 Ohio App. LEXIS 4231 (Ohio Ct. App. Lorain County Sept. 21, 1994). Under the totality of the circumstances test, the Court finds that the underlying statements that were videotaped without the consent of the defendants were nonetheless voluntarily made. *People v. Robinson*, 5 A.D.3d 508, 772 N.Y.S.2d 586 (2d Dep't 2004).

Several of the defendants claim that their statements are not voluntary because they were induced by promises of leniency made by the detectives assigned to the case. Detective Mitchell testified that he told Davis and Braham that he would inform the District Attorney that he was cooperative. However, the courts do not construe promises by the police to inform the District Attorney of a defendant's cooperation as a promise of leniency. *People v. Daniels*, 309 A.D.2d 1225, 765 N.Y.S.2d 307 (4<sup>th</sup> Dep't 2003)(any promise by the officer to inform the District Attorney of defendant's cooperation was not a promise of leniency); *People v. Rufino*, 293 A.D.2d 498, 740 N.Y.S.2d 113 (2d Dep't 2002)(interrogating officer's comment that it would be beneficial to the defendant if he cooperated did not constitute a promise of leniency which would render the waiver and statement involuntary); *People v. Sanchez*, 286 A.D.2d 650, 730 N.Y.S.2d 706 (1<sup>st</sup> Dep't 2001)(promise to tell District Attorney's Office that defendant cooperated was not

a promise of leniency). Thus, the defendants' statements were not rendered involuntary by any such statements made by the police.

Lloyd Braham also argues that his statements should be suppressed because his indelible right to counsel had attached, precluding police from questioning him on these charges. A defendant who is in custody for a crime for which he has counsel, may not, in the absence of his attorney, waive the right to counsel, even if the police seek to question him about an unrelated crime. *People v. Burdo*, 91 N.Y. 2d 146, 667 N.Y.S.2d 970 (1997). However, even assuming that Braham was represented by counsel on a prior unrelated charge at the time he was brought in for questioning, he was not in custody on that charge at the time of the interview. A defendant who is not in custody on the prior matter in which he is represented may waive his right to counsel for questioning on the new charge. *Id.*; *People v. Steward*, 88 N.Y.2d 496, 646 N.Y.S.2d 974 (1996); *People v. Bing*, 76 N.Y.2d 331, 559 N.Y.S.2d 474 (1990); *People v. Jordan*, 21 A.D.3d 385, 800 N.Y.S.2d 33 (2d Dep't 2005); *People v. Madison*, 22 A.D.3d 684, 804 N.Y.S.2d 339 (2d Dep't 2005); *People v. Scaccia*, 6 A.D.3d 1105, 776 N.Y.S.2d 420 (4<sup>th</sup> Dep't 2004)(because defendant was not in custody on pending unrelated charge when he was questioned by police, there was no derivative right to counsel, even though police knew that defendant was represented by counsel on that charge when they questioned him). Braham's right to counsel was therefore not violated and there is no basis to suppress his statements.

### C. The Payton Issue

Although not raised in his motion papers, Lloyd Braham claims that his warrantless seizure from a garage was unconstitutional under the Fourth Amendment of the United States

Constitution and the corresponding New York State Constitution, and in violation of *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371 (1980) and its progeny.

The first question is whether the defendant had a legitimate expectation of privacy in the garage. The Court is not convinced that Braham has demonstrated that he had a legitimate expectation of privacy in his aunt's detached garage. *People v. Hornedo*, 303 A.D.2d 602, 759 N.Y.S.2d 84 (2d Dep't 2003).

Even assuming that Braham had standing to assert this claim, however, there was no *Payton* violation. The credible testimony shows that (1) the garage door was open and that Braham and the detectives saw each other as the detectives approached; (2) the police never crossed the threshold of the garage; and (3) the police had their guns drawn, but at their sides and pointed to the ground, at the time that they encountered Braham.

The Fourth Amendment and *Payton* have no application if a defendant is outside of his home, even if he left at the request of the police. *People v. Minley*, 68 N.Y.2d 952, 510 N.Y.S.2d 87 (1986). This is so even when the defendant voluntarily left his home and was arrested on a porch, *People v. Keller*, 148 A.D.2d 958, 539 N.Y.S.2d 197 (4<sup>th</sup> Dep't 1989), *lv. den.* 73 N.Y.2d 1017 (1989), or in a driveway, *People v. Valenti*, 143 A.D.2d 955, 533 N.Y.S.2d 509 (2d Dep't 1988), *lv. den.* 73 N.Y.2d 860 (1988).

*Payton* does apply in instances where the police never physically cross the threshold, but nonetheless compel an individual to exit his home and surrender through threats of force. Under such circumstances, the arrest is deemed to have taken place inside the home. *See e.g., Bing ex rel. Bing v. City of Whitehall*, 456 F.3d 555, 564 (6<sup>th</sup> Cir. 2006) (by laying siege to defendant's

house, breaking his door and windows, and employing pepper gas, police accomplished a Fourth Amendment seizure); *Sharrar v. Felsing*, 128 F.3d 810, 819 (3d Cir. 1997)(SWAT team surrounded residence with machine guns pointed at windows; persons inside ordered to leave backwards with hands raised); *United States v. Maez*, 872 F.2d 1444, 1450 (10<sup>th</sup> Cir. 1989)(defendant arrested in his home when SWAT team holding rifles surrounded his trailer and told him to leave his home by means of a loudspeaker); *U.S. v. Al-Azzawy*, 784 F.2d 890 (9<sup>th</sup> Cir. 1985)(trailer surrounded by police with weapons drawn; defendant ordered to leave trailer and drop to his knees by bullhorn).

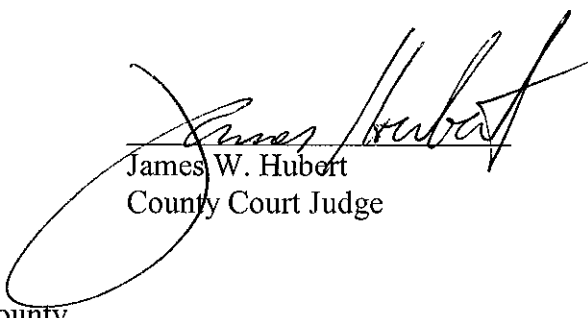
Here, however, the defendant was in a garage with the door open. He voluntarily exposed himself to the detectives' view. There is no reasonable expectation of privacy in what is left visible to the naked eye. Moreover, the defendant's testimony that he was ordered out of the garage at gunpoint is not credible, and the Court resolves this issue in the People's favor. See *People v. Prochilo*, 41 N.Y.2d 759, 395 N.Y.S.2d 635 (1977); *People v. Coleman*, 306 A.D.2d 941, 760 N.Y.S.2d 797 (4<sup>th</sup> Dep't 2003). Thus, the police conduct in this case does not require the suppression of Braham's statements.

As to the *Rodriguez* aspect of the hearing, *People v. Rodriguez*, 79 N.Y.2d 445, 583 N.Y.S.2d 814 (1992), the Court finds that those persons who identified the defendants from photographs were sufficiently familiar with the defendants as to render them impervious to suggestion, and that the identification procedures were merely confirmatory.

The Court has considered all the remaining issues raised by the defendants, and to the extent not expressly addressed herein, they are denied for lack of merit.

The foregoing constitutes the Decision of this Court.

Dated: White Plains, New York  
April 14, 2007



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County Court Judge

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