

People v Magnetti

2008 NY Slip Op 33730(U)

May 9, 2008

Supreme Court, Westchester County

Docket Number: 06-1047-02

Judge: Barbara G. Zambelli

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FILED
AND ENTERED
ON 5/9 2008
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
THE PEOPLE OF THE STATE OF NEW YORK
- against -
CARMELA MAGNETTI,
Defendant.
-----x
ZAMBELLI, J.

Indictment No:06-1047-02
FILED
DECISION AFTER HEARING
MAY 09 2008
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for the crimes of criminal facilitation in the second degree, hindering prosecution in the first degree (two counts), and tampering with physical evidence. By decision and order dated January 30, 2007, this court granted defendant's motion to suppress solely to the extent of ordering pretrial hearings. The suppression hearings were held on May 1, 2, and 5, 2008. Detective Thomas Reddy, retired from the Ossining Police Department and Investigator Peter Becerra of the Westchester County District Attorney's office gave testimony.

The following noticed statements were the subject of the Huntley hearing:

1. Oral statement made at approximately and between 11:50 p.m. and 1:00 a.m. on or about May 14, 2006, at the Ossining Police Department.
2. Oral statement made at approximately 6:00 p.m. on or about May 17, 2006, at the Arcadian Shopping Center, Ossining.
3. Oral statement made at approximately and between 9:30 p.m. and 11:00 p.m.

on or about May 17, 2006, at the Ossining Police Department.

4. Written statement made at approximately 9:30 p.m. on or about May 17, 2006, at the Ossining Police Department.

5. Signed statement made approximately and between 11:00 p.m. and 12:00 a.m. on or about May 17, 2006 - May 18, 2006 at the Ossining Police Department

6. Oral statement made at approximately and between 7:00 p.m. and 7:30 p.m. on or about May 19, 2006, in Pleasantville.

7. Electronically recorded statement made at approximately 1:00 p.m. on or about July 30, 2006, at the Pleasantville Diner.

FINDINGS OF FACT

The credible testimony adduced at the hearing on this case established that on May 14, 2006, Detective Reddy was in Police headquarters interviewing Anne Trovato concerning the death of her mother, Patricia Mery. At approximately 11:45 p.m. Detective Reddy spoke to defendant who was seated in the Youth Division Office with Detective Apostolico. Detective Reddy did not know how defendant arrived at headquarters as she showed up unexpectedly. Defendant and the detective spoke for 10-15 minutes. Defendant left.

On May 15, 2006, a search warrant was executed at defendant's home, 156 Foshay Avenue, Pleasantville. Detective Reddy and defendant had a brief conversation in defendant's home during the course of the search warrant execution.

On May 17, 2006, at approximately 6 p.m., Investigator Becerra met with defendant and her mother in the Arcadia Shopping Center parking lot in Ossining. Becerra had set up the meeting earlier that day. Investigators Hatch and Cohen were

present as well. They had a conversation and then left for the Ossining Police Department after about an hour. Defendant and her mother followed the investigators to the Ossining Police Department.

On May 17, 2006, Detective Reddy made arrangements to interview the defendant. Defendant and her mother came to headquarters at approximately 9:00 p.m. The detective spoke to defendant at 9:30 p.m. in the second floor conference room - a large room with 8-10 chairs. The detective interviewed defendant's mother, Gloria Magnetti, first while defendant waited in the briefing room. A Police Officer stayed with her. After the interview with defendant's mother, the defendant was brought into the conference room with Detective Reddy and Detective See. Defendant's mother waited in the briefing room. Defendant was asked if she needed anything and if she had any questions. Defendant began to cry during the interview. Defendant's statements are set forth in sum and substance in the People's 710. 30 notice. Defendant was cooperative. Detective Reddy was reassuring and professional. Defendant gave a handwritten time frame of events for the day of May 11, 2006. Detective Reddy typed up a statement in another room. Detective See stayed with defendant in the conference room. The typed statement was brought to her for any corrections or errors. She read it and signed it along with the detectives' signatures. Detective Reddy told her they would be in touch with her. She was somber and quiet when the detective brought her out to her mother. Defendant and her mother left.

On May 18, 2006, in the early morning hours, while another search warrant was being executed at 156 Foshay Avenue, defendant gave Detective Reddy a suicide note by Anne Trovato. The detective had a conversation with defendant about the

computer.

On May 19, 2006, at the Pleasantville Diner, the defendant met with Detective See, Detective Reddy, Assistant District Attorney Hocheiser and Investigator Becerra. Defendant's cousin, Artie Walsh, accompanied her. A conversation was held over lunch. Investigator Becerra organized the meeting.

On May 19, 2006, Detective Reddy met with defendant in the evening to show her and her cousin, Artie Walsh, a picture. They met at MacArthur's bar and restaurant in Pleasantville. They had a drink, dinner, and friendly conversation. The pictures shown were entered into evidence during the hearing. Defendant indicated the person in the picture looked like Anne Trovato. Defendant was not shown the photo in Artie Walsh's presence. Defendant made statements similar to the statements she had made to the detective in the past.

On some other occasion prior to defendant's arrest, Detective Reddy met with Artie and defendant at Foley's bar in Pleasantville. They spoke for 15- 20 minutes. Between May 19, 2006 and July 30, 2006, Investigator Becerra had 20-30 telephone conversations with the defendant. He dropped off dog food for her dog. Defendant usually called Investigator Becerra and he returned her calls. Defendant was concerned about Anne Trovato's suicide attempt, concerned about custody of Anne's daughter Arianna, and wanted to know about the investigation and if any evidence had been found. On July 29, 2006, defendant called Investigator Becerra expressing concern about the statements her cousin Artie had made to the police. She wanted to know what Artie had told them. Investigator Becerra told her he would meet with her. They eventually met on July 30, 2006, at the Pleasantville Diner for lunch. Investigator

Becerra was wired to record their conversation. A surveillance team was set up across the street from the diner doing video surveillance and audio surveillance. Recordings were placed in evidence during the hearing. Their meeting lasted approximately two hours and they left.

CONCLUSION 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 person, innocent of any crime, would have thought had he/she been in the defendant's position (see, People v. Yuki, 25 NY2d 585; People v. Centano, 76 NY2d 837).

The facts clearly established that Defendant was not subjected to custodial interrogation at any time. Moreover, there is no evidence of threats or coercion or unlawful police conduct.

The video surveillance photo in the Galleria mall was entered into evidence upon a stipulation that defendant was the person in the photo.

Accordingly, the motion to suppress is in all respects denied.

Dated: White Plains, New York

May 9, 2008


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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