

**People v Spencer**

2010 NY Slip Op 33960(U)

January 25, 2010

Supreme Court, Nassau County

Docket Number: 1249N/09

Judge: David P. Sullivan

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COUNTY COURT-NASSAU COUNTY

Present:

Crim. Term:Part 6

Motion Cal. #\_\_

Indictment# 1249N/09

HON. David P. Sullivan  
County Court Judge

**PEOPLE OF THE STATE OF NEW YORK** X

- against -

**JONATHAN SPENCER,  
GARY SPENCER,  
ISAAC HOLLAND and  
MATTHEW ROMAIN,**

**Defendants.**

: HONORABLE KATHLEEN M. RICE  
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: Mineola, New York  
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X

The Court conducted a Huntley, Mapp and Dunaway hearing on January 5, 6, 7, 11 and 14<sup>th</sup>, 2010. The People called seven witnesses, Nassau County Detectives Jeffrey Schilling, Lawrence Sheinberg, James Cereghino and Nassau County Police Officers Steven Benjacob, Anthony Raymond, Paul Trosko and George Pribyl. The defendants did not call any witnesses. The Court credits the testimony of the Peoples' witnesses and makes the following findings of fact and conclusions of law.

Findings of Fact

At approximately 3:23 a.m. on April 4, 2009, police officer Benjacob and his partner received a radio call to respond to 702 Dorothea Lane, Elmont, Nassau County, New York. The radio call was for an armed home invasion involving four or five armed suspects who fled in a van. The van is spotted by

Police Officer Benjacob who attempts to pull the suspect van over. A police pursuit ensues involving a chase and numerous gun shots exchanged between the suspects in the van and the police.

The van is stopped in Queens County where all four defendants are arrested. Police Officer Benjacob checks the inside of the van for any additional suspects and he sees a handgun on the rear seat. The police obtained a search warrant for the van.

Defendants Jonathan Spencer, Isaac Holland and Matthew Romain are eventually transported separately to the Nassau County 5<sup>th</sup> Precinct. There is no conversation between defendants Jonathan Spencer, Isaac Holland and Matthew Romain and the police officers transporting them to the precinct. Defendants Jonathan Spencer and Isaac Holland have various facial and back injuries, defendant Gary Spencer is transported to the Nassau County Medical Center for treatment for a bullet wound.

At the 5<sup>th</sup> Precinct squad room defendants Jonathan Spencer and Matthew Romain are spoken to separately by Detectives Schilling and Sheinberg. Each defendant, Jonathan Spencer and Matthew Romain, are given their Miranda Warnings and each defendant agrees to speak with the police. During the course of the day both defendant Jonathan Spencer and Matthew Romain give the police oral statements which statements are eventually reduced to type written statements.

Defendant Isaac Holland is detained in the basement of the 5<sup>th</sup> Precinct in the Juvenile Aid Bureau. When Detectives Schilling and Sheinberg initially question defendant Isaac Holland for pedigree information the defendant tells them he is 15 years old and that his name is Randy Jenkins. Upon further investigation the detectives later confront defendant Holland regarding his age and the defendant tells the detectives he is 16 years old. Detective Sheinberg administers the Miranda Warnings to defendant Holland, who is still identifying himself as Randy Jenkins at this point. Defendant Holland agrees to speak with the detective. During the course of the day defendant Holland is properly identified. Additionally defendant Holland gives oral statements, which oral statements are eventually reduced to a typed written statement, and a video taped statement to the police.

On April 4, 2009 at approximately 7:37 a.m. Detective James Cereghino met with defendant Gary Spencer at the Nassau County Medical Center. Defendant Gary Spencer was under doctor's care and receiving morphine. Defendant Gary Spencer was given his Miranda Warnings and he agreed to speak with the detective. Defendant Gary Spencer gave an oral statement. Detective Cereghino reduced the statement to writing. Detective Cereghino asked defendant Gary Spencer to sign the written statement. The defendant Gary Spencer refused to sign the statement and made additional oral statements regarding his refusal to sign.

## CONCLUSIONS OF LAW

### 1. Probable Cause

The police had reasonable suspicion to attempt to stop the van the defendants were in based upon the van fitting the description used by the four or five suspects who had just committed a violent home invasion. The failure of the van to stop for the police, the ensuing chase and the shots fired from the van at the police gave the police probable cause to arrest the defendants. People v. McRay, 51 N.Y.2d 594; People v. Travis, 266 AD 2d 410.

### 2. Huntley

#### a) Constitutionality/Voluntariness

All four defendants Jonathan Spencer, Gary Spencer, Isaac Holland and Matthew Romain all made knowing, voluntary and intelligent waivers of their constitutional rights prior to freely and voluntarily making oral statements which oral statements were reduced to writing for each defendant. Defendants J. Spencer, Issaac Holland and Matthew Romain all voluntarily signed the written statements. Defendant Gary Spencer refused to sign the statement. Defendant Isaac Holland additionally freely and voluntarily gave a video taped statement after waiving his constitutional rights. All the defendants' claims of being beaten, coerced or forced into making their statements are belied by the evidence at the hearing. The injuries to defendants Jonathan Spencer and Isaac Holland were superficial and did not rise to a level that their free-will was overborne. The injuries were consistent with superficial injuries one would expect from the violent encounter with the police that the defendants caused. With respect to defendant Gary Spencer, notwithstanding he was in the hospital being treated for a gun shot wound and using morphine, the evidence establishes he was lucid when speaking with the detective. In fact the court notes that the defendant Gary Spencer voluntarily gave what amounts to an exculpatory statement to the police and he clearly knew what was going on. The Court finds all of the four defendants statements to be voluntary. Therefore there is no constitutional impediment to the defendants' oral statements and oral statements which statements were reduced to writing and signed by defendants Jonathan Spencer, Isaac Holland and Matthew Romain and unsigned by defendant Gary Spencer as well as defendant Holland's video statement from being introduced at trial.

Any statements made by each of the four defendants before they were given their constitutional rights were all in the form of pedigree information and those statements were made freely and voluntarily by each defendant to the detectives and are admissible at trial.

#### b) Preclusion Defendant Matthew Romain

Counsel for defendant Romain seeks preclusion of the word "agreed" as well as the words

“Jonathan, Coat, for carrying drugs and guns” contained in Detective Schilling’s notes of his interview of defendant Romain which notes were not given to counsel pursuant to C.P.L. §710.30 within 15 days of arraignment. The Court grants preclusion with respect to those words.

**MAPP**

The Court conducted a Mapp hearing limited to a review of the stop of the van and review of the legal sufficiency of the search warrant issued by the Honorable James McCormack of this Court authorizing the police to seize weapons and other evidence from the van the defendants were occupying.

The police action initially involving Police Officer Benjacob looking into the van and seeing a silver handgun in plain view was lawful and proper. Harris v. United States, 390 U.S. 234. The Court views the police conduct as prudent and reasonable based upon the totality of the circumstances.

The Court has taken judicial notice of the search warrant. The Court has reviewed the warrant itself and the supporting affidavit and finds each sufficient on its face. This is the end of this Court’s inquiry. This Court is not litigating the finding of the earlier court, and those items seized pursuant to the search warrant are not the subject matter of this hearing. People v. Corley, 122 A.D.2d 279, appeal denied 68 N.Y.2d 811. Consequently the defendants are not entitled to a hearing with regards to any property seized from the van pursuant to the search warrant. People v. Bartolomeo, 53 N.Y.2d 255; People v. Hines, 262 A.D.2d 423(2d Dept.), People v. Sobolof, 109 A.D.2d 903(2d Dept.). There are no constitutional issues for this Court to examine in regards to the property seized pursuant to the validly issued search warrant. People v. Loria, 10 N.Y.2d 368.

The inquiry for this Court is whether the stop of the subject van was lawful and proper. The Court, as discussed herein above, finds that the stop of the van was lawful. Additionally, the Court finds that it was lawful and constitutional for the police to enter the van and in so doing a weapon was seen in plain view. Said weapon gave rise to a search warrant application. A court of equal jurisdiction found the police had probable cause to search said van and seize any evidence of machine guns, ammunition, etc. and therefore any evidence seized from the van is admissible at trial.

SO ORDERED.

ENTER

ENTERED  
AND  
FILED  
JAN 27 2010  
CLERK'S OFFICE  
COUNTY COURT  
NASSAU COUNTY

*David P. Sullivan*  
David P. Sullivan, J.C.C., A.S.C.J.

Dated: January 25, 2010