STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

SABRINA M. GUNTER,

Defendant

DECISION
AND
ORDER

Ind. No. 11-05

Wayne County District Attorney
Jacqueline A. McCormick, Esq., Assistant District Attorney
For the People

Douglas M. Jablonski, Esq.
Attorney for the Defendant

The Defendant Sabrina M. Gunter has been charged with one count of Assault in the Second Degree and one count of Burglary in the Second Degree, pursuant to the above-referenced Indictment. On April 28, 2011, the Court held a suppression hearing to determine the admissibility of statements allegedly made by the Defendant, as well as the validity of the search warrant, pursuant to which the police seized a blood-stained shirt and a knife from the Defendant's apartment.

As to the search warrant, the Defendant argues that the items seized from her apartment should be suppressed, based upon her contention that there are no factual allegations recited in the application or the supporting

papers which indicate the source of the address of the premises intended to be searched. She maintains that the papers fail to meet the *Aguilar-Spinelli* test in that the reliability and the basis of knowledge of the informant have not been demonstrated.

However, the Court has reviewed the supporting papers submitted with the application of Investigator Alan Graham for the search warrant and finds that the sworn depositions of the victim Keri A. Sexton and her live-in boyfriend Christopher L. Williams provided a sufficient basis for the investigator's request to search the Defendant's residence at 2216 Arrowbend Drive, Williamson, New York. The victim's statement indicates that the defendant is a neighbor with whom she has been acquainted for a few months. Mr. Williams' deposition is more specific, in that he identified the Defendant's apartment building by name in the same complex where he and the victim reside. Finally, the investigator's application, prepared after the Defendant's arrest at her apartment, specifically identifies the above address as the Defendant's residence. The Defendant's reliance on the *Aguilar-Spinelli* test is misplaced, as the courts have held that the test does not apply where the identity of a citizen informant is known to the court, disclosed in a sworn deposition, and the known informant has related first-hand observations. (See, e.g. *People v Kirby*, 168 AD2d 981 (4th Dept,

1990). *People v McCulloch*, 226 AD2d 848 (3rd Dept, 1996)). "The two-prong test applies to 'information supplied by the undisclosed informant' (*People v Martinez*, 80 NY2d 549, 552, 592 NYS2d 628, 607 NE2d 775). A sworn statement of an identified member of the community attesting to facts directly and personally observed by him is in and of itself sufficient to support the issuance of a search warrant." (*People v David*, 234 AD2d 787 (3rd Dept, 1996)). (emphasis added)

The Defendant also contends that any statements made by the Defendant should be suppressed, in that they were made while she was in police custody without the benefit of *Miranda* warnings. According to the testimony of Deputy Nicholas Yates of the Wayne County Sheriff's Department, he was dispatched to the scene by an official radio call and first encountered the Defendant when he entered her apartment, after having previously interviewed the victim and her boyfriend at their apartment. The door of the Defendant's apartment was open, and members of the New York State Police were already present. The deputy testified that the Defendant asked him "what was going on", and he responded by asking her to tell him "what was going on". Without further comment, the Defendant proceeded to put her hands behind her back and said "let's do it". The officer handcuffed the Defendant and placed her in the back of his patrol car. During the ride to the Wayne County Sheriff's Department, the

Defendant then proceeded to make additional statements. The deputy testified that these statements were not made in response to any questioning.

The Defendant relies on two decisions issued by the Court of Appeals in *People v Velasquez*, 68 NY2d 533 (1986) and *People v Stoesser*, 53 NY2d 648 (1981). Both cases hold that, in the absence of *Miranda* warnings, it must be shown that any statements made by a defendant were "in no way the product of an 'interrogation environment', the result of "express questioning or its functional equivalent." (*Stoesser* at 650). In *Velasquez*, the Court stated that "(i)nterrogation includes not only formal questioning by the police or prosecutor, but also more subtle forms of state inducement to make incriminating statements."

However, based on the credible testimony of Deputy Yates, this Court finds that the statements made by the Defendant prior to her receiving any *Miranda* warnings are the not "the product of police interrogation or its functional equivalent". There is no evidence in the record that suggests that the deputy's extremely brief exchange upon his initial contact with the Defendant was reasonably likely to evoke an incriminating response. (See, e.g. *People v Hylton*, 198 AD2d 301 (2nd Dept, 1993)). The test is whether the Defendant's statement can be said to have been triggered by police

conduct which should reasonably have been anticipated to evoke a declaration from the defendant (See, *People v Webb*, 224 AD2d 464 (2nd Dept, 1996). This Court finds that the Defendant's statement was not the result of such conduct.

Finally, although the Defendant was handcuffed and sitting in the backseat of a police car, there is nothing in the record to suggest that her statements made during the drive to the station were anything but spontaneous, and not the product of custodial interrogation. (See, e.g. *People v Taylor*, 83 AD3d 1133 (2nd Dept, 2011); *People v Young*, 68 AD3d 1761 (4th Dept, 2009)).

Therefore, the Court finds that the Defendant's statements and the physical evidence seized at her apartment pursuant to the search warrant are admissible at trial. The Defendant's motion is denied.

This Decision constitutes the Order of the Court.

Dated: May 13, 2011
Lyons, New York

Honorable Dennis M. Kehoe
County Court Judge