

**People v Purdy**

2011 NY Slip Op 33604(U)

November 3, 2011

Wayne County Ct

Docket Number: 11-68

Judge: Dennis M. Kehoe

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STATE OF NEW YORK  
COUNTY COURT COUNTY OF WAYNE

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PEOPLE OF THE STATE OF NEW YORK

-vs-

DECISION  
AND  
ORDER

ADAM J. PURDY,

Ind. No. 11-68

Defendant

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Wayne County District Attorney  
Christopher Bokelman, Assistant District Attorney  
For the People

Joseph S. Damelio, Esq.  
Attorney for the Defendant

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The above-named Defendant has been charged with one count of Burglary in the Second Degree, one count of Grand Larceny in the Second Degree, and one count of Criminal Possession of Stolen Property in the Second Degree. A suppression hearing was held on October 13, 2011, at which Investigator Douglas F. Thomas and Investigator Geoffrey Governor, both of the New York State Police, were the only witnesses.

Based on the credible testimony and the exhibits entered into evidence, the Court issues the following Findings and Conclusions:

- 1) As a result of an ongoing police investigation into the burglary of

a residence located on East Port Bay Road, Wolcott, New York, the State Police acquired information that the Defendant was a suspect in the commission of said burglary.

2) On April 5, 2011, the state police learned that the Defendant was en route to Eastview Mall in Victor, New York, to pick up his girlfriend, who was shopping there with her sister.

3) After Investigators Thomas and Governor arrived at Eastview Mall, they first encountered the Defendant seated in the back seat of a New York State Police unmarked vehicle parked at the mall. The vehicle was also occupied by Investigator Ulatowski who was sitting in the driver's seat.

4) Neither witness could recall whether the Defendant had been handcuffed, but it was conceded that the Defendant was clearly in custody at the time he was placed in the police vehicle.

5) Investigator Thomas testified that he opened the rear door of the vehicle, and requested that the Defendant hand him the keys to a Honda Civic which the Defendant had driven to the mall. The Defendant refused, at which point Investigator Thomas advised the Defendant as to his Miranda rights. Investigator Governor was present while the warnings were read to the Defendant. Both Investigators testified that the Defendant indicated that

he would talk to them.

6) Investigator Thomas then proceeded to pat down the Defendant and took his keys. The Investigator testified that he confiscated the keys because the police were going to have the vehicle towed to the State Police barracks in Canandaigua.

7) Investigator Thomas then proceeded to walk away from the vehicle. However, as Investigator Governor started to leave, the Defendant allegedly called the Investigator back, stating "Okay, I'll tell ya." He then proceeded to tell the investigator that the police would find a bag of money in the car.

8) Shortly thereafter, the Defendant signed a written consent form, authorizing the police to search the vehicle.

9) Investigator Governor then proceeded to search the Defendant's vehicle, where he found a black back pack containing packets of money in the truck, as well as additional money plus two watches and a necklace in the front console.

10) The Defendant was subsequently transported to the State Police barracks, a ride which lasted approximately 15 to 20 minutes.

11) After arriving at the barracks, the Defendant was then interviewed

by the investigators. No additional Miranda warnings were given. Based on the interview, Investigator Governor prepared a written statement summarizing the interview, a document which the Defendant refused to sign. The interview lasted approximately one and one-half hours.

12) Based on the credible testimony at the hearing, the Court concludes as follows:

a) Based upon the information obtained by the police during the investigation of the subject burglary, the police had reasonable cause to take the Defendant into custody. (The Court notes that hearsay is admissible in a suppression hearing, pursuant to CPL §710.60).

b) While the Court agrees that there are some discrepancies in the investigators' respective accounts as to whether the Defendant was in or out of the police vehicle during the administration of the Miranda warnings, these discrepancies are minor in nature and, while they may affect issues as to weight or credibility, they do not affect admissibility.

c) The Defendant was given Miranda warnings prior to any questioning. While the Defendant's response to the warnings was not recorded by the police in writing, it has been routinely held by the appellate courts that a defendant's conduct following the initial administration of

Miranda warnings may constitute an implied waiver of his rights (See, e.g. *People v Hackey*, 36 AD3d 953 (3<sup>rd</sup> Dept, 2007); *People v Thornton*, 87 AD3d 1668 (2<sup>nd</sup> Dept, 2011)). Here, Defendant's actions, taken together with the Investigators' testimony that the Defendant indicated that he understood his rights, constitute a valid waiver.

d) The Court finds credible the testimony of Investigator Governor that the Defendant spontaneously called out to him as the investigator was walking away from the police vehicle and then proceeded to make certain voluntary statements. Any conjecture that such statements must have been made in response to police questioning must be considered speculative in nature.

e) Based on the same testimony, the Court finds that the Defendant voluntarily consented to the search of his car, as indicated by his execution of the written consent form in evidence (Parenthetically, the Court notes that the confiscation of the Defendant's keys may have been improper; such action was not the result of a search incident to an arrest, as there were neither exigent circumstances, nor a threat to officer safety. However, this issue was rendered moot by the written consent.)

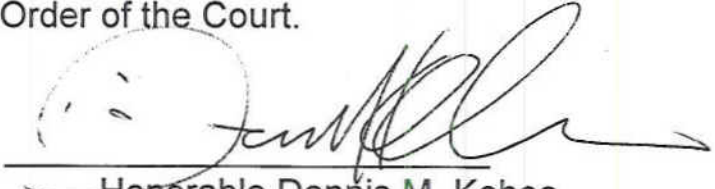
f) The police were not required to re-advise the Defendant

regarding his Miranda rights at the barracks. The testimony indicates that the search of the vehicle lasted approximately ten to fifteen minutes, and the subsequent ride to the barracks took approximately fifteen to twenty minutes. "Delays as much as 11 hours between Miranda warnings and subsequent questioning have been countenanced." (See, e.g. *People v Carelli*, 41 AD3d 1092 (3rd Dept, 2007); *People v Hast*y, 25 AD3d 740 (2<sup>nd</sup> Dept, 2006) (citations omitted)). The interview itself lasted only ninety minutes.

Therefore, the Court holds that the Defendant's motion to suppress is denied. The Court finds that there was probable cause for the Defendant's arrest, that he was properly advised as to his Miranda rights, that he waived those rights and that he executed a valid written consent to search his vehicle. The Defendant's statements are found to be voluntary beyond a reasonable doubt, and they were not the product of force, intimidation or duress. Therefore, all statements and all physical evidence shall be admissible at trial.

This Decision constitutes the Order of the Court.

Dated: November 3, 2011  
Lyons, New York



Honorable Dennis M. Kehoe  
County Court Judge