

**People v Saunders**

2013 NY Slip Op 34072(U)

February 22, 2013

County Court, Westchester County

Docket Number: 12-0433

Judge: Barbara G. Zambelli

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FILED

FEB 25 2013

*DR*

COUNTY OF WESTCHESTER

<p>FILED AND ENTERED ON FEB. <u>22</u>, 2013 WESTCHESTER COUNTY CLERK</p>
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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 -

MICHAEL SAUNDERS,

Defendant.

-----X

ZAMBELLI, J.

Indictment No: 12-0433

DECISION AFTER HEARING

The defendant has been indicted for the crimes of Murder in the Second Degree, Criminal Possession of a Weapon in the Second Degree, Assault in the Second Degree and Reckless Endangerment in the First Degree for acts he allegedly committed on or between March 21, 2012 and March 24, 2012 in the City of White Plains.

By decision and order dated August 30, 2012, the Honorable James Hubert granted defendant's motion to suppress to the extent of ordering Rodriguez, Dunaway, and Huntley hearings. With regard to the Huntley hearings, the People concede that defendant made an unequivocal request for counsel but seek to cross examine the defendant on his statements subsequent to his request for counsel in the event the defendant takes the witness stand. During the hearing the following witnesses gave testimony: from the White Plains Police Department: Detective Richard Lee, Detective Patrick Kirby, Detective Jamie Douglass, Detective James Tassone and Sergeant Brian Tiedemann.

### Findings of Fact

The credible testimony adduced at the hearing on this case established that on March 24, 2012 at approximately 12:11 p.m. the White Plains Police Department responded to 312 Main Street, Apt 3H, the scene of the murder of Sabrina Durrah. Members of Ms. Durrah's family had been trying to contact Sabrina without success since the evening of Wednesday, March 21, 2012. On March 24, Sabrina's aunt discovered her body as well as Ms. Durrah's four month old baby, Jaymie, lying on the floor soaked in urine and dehydrated. The following day, Sunday, March 25, Detective Jamie Douglass went to 312 Main Street to view and obtain video from the crime scene. A tenant in the building, Pamela Gonzalez had reported to the police that sometime between 8:30 and 9 p.m. the night of the 21<sup>st</sup> she heard what she believed to be two gun shots and a baby crying. From the video of March 21, 2012 an individual appeared at approximately 8:12 p.m. It was a very warm evening, the exterior camera of the building facing Main Street depicted a male black wearing a long sleeve hoodie, dark colored gloves, dark pants, with a hockey style mask propped on his head approaching the building, speaking on a cell phone. This individual is on camera entering the foyer, touching a buzzer, entering the lobby and walking in the direction of the stairwell. Several minutes later the camera captures what appears to be the same individual with the hockey mask now covering his face. The camera on the side of the building captures this individual returning to a dark colored vehicle. The Detectives did not know the person depicted in the video. At 11:15 p.m. that night Detective Douglass and Detective Lee met with the Superintendent of the building, Abraham Martinez, in Detective Douglass's office to see if Martinez could identify

the person in three still photos from the video. He immediately recognized the male as the bus driver, Sabrina's boyfriend, and the father of her child, Jaymie. Martinez signed the photo, Exhibit 24, at 11:15 and signed his statement at 11:12 a.m. (sic) ( During the hearing the detective corrected the time to 11:12 p.m.). The photo is a picture of defendant. In his statement, Exhibit 19, Martinez stated that a year and a half prior to the incident, he saw her hanging out with an older guy. He would see her with this guy and make fun of her because he was older. Sabrina told Martinez that her boyfriend was a bus driver. Martinez had seen defendant on Windsor Terrace, the previous summer, parking a car, an older model BMW. He was trying to walk into the service entrance. Martinez asked defendant where he was going and was told that he was going to the third floor to see Sabrina. Martinez told him that he couldn't use the service entrance and walked him to the front entrance, and took him up the elevator to the third floor. Martinez saw defendant in the building another three times after that. Sabrina told him that she was pregnant and that the bus driver was the father but that he didn't want the baby and was not going to take care of it.

Ahmeda Abrams, Sabrina's sister, told the police that defendant was Jaymie's father. His name is Mike, she believed his last name is Saunders. She described him as approximately 50 years old, 5' 8' medium build, with a pot belly and a mole on his face. She explained that Sabrina intended on filing papers in court for child support. A paternity petition was found in Sabrina's apartment, Exhibit 39, naming defendant as the father. The petition is dated March 8, 2012 with a court appearance of June 18, 2012. Ahmeda told the police about an incident three weeks prior when she was with Sabrina when they saw

defendant in the area of Five Guys restaurant on Main Street. She brought Jaymie over to the defendant in the restaurant to meet her father for the first time. She asked defendant if he was going to say something. He answered "for what"? Ahmeda told him that Jaymie looked just like him. Defendant answered, "no, she doesn't." She told him Sabrina was going to file for child support in court.

The police did a name search of Michael Saunders with an approximate age of 50 through DMV records. One of the results was for a Michael Saunders with a DOB of 7/10/62 residing at 361 Warburton Avenue, Yonkers, the registered owner of a 1998 Black BMW. A driver's license picture, Exhibit 23, was printed out and shown to Ahmeda who identified him as "Mike", the father of Jaymie.

Based on the foregoing, the Department obtained a search warrant at 7:14 p.m. on March 26, 2012 for defendant's home, car, and defendant himself. The investigation uncovered that defendant was employed as a bus driver with Liberty Lines and he was scheduled to work on Monday, March 26 until 7:30 p.m. At 5:20 p.m. that day, the department assigned a team of detectives to follow the defendant during his bus route that day. The department and Liberty Lines worked out a plan whereby defendant's supervisor Erickson was to stop defendant's bus when entering the bus terminal on Walker Road in Valhalla. Erickson would speak to the defendant and then Detective Douglass and the other members of the department would approach to speak to him. Several detectives and members of the Westchester County Department of Public Safety were in the terminal prepared to meet the defendant at the terminal at approximately 7:00 p.m. It was decided that a ruse would be played out: defendant would be told that the White Plains Police

Department had received a complaint about an altercation on the bus with a woman and her kids. Upon arrival, defendant's bus was stopped by his supervisor. Detective Douglass and three other members of the department approached defendant. The detectives at this point knew that a search warrant for the defendant had been signed by a Judge. Detective Douglass told defendant that the Detective was there to speak to him about the altercation and asked defendant if he would come to the police station to speak with the detective who was assigned to handle the case. Defendant asked what it was about to which Detective Douglass responded that he did not want to speak about it at that location. He asked defendant if he had a problem coming in to which defendant responded he would not have a problem. The detective then patted down defendant for weapons before defendant entered an unmarked police vehicle described as a "soft" vehicle (there is no cage, no markings) Detective Douglass removed a cell phone and personal papers. The interaction between defendant and the detectives was captured by the cameras in the terminal. The video played during the hearing depicted the time period, 7:12 p.m.- 7:17 p.m. in evidence as Exhibit 46. Defendant was taken to the police station with three other members of the department . During the seven minute drive there was no conversation. Defendant's vehicle , the 1998 Black BMW, parked in the lot outside the terminal, was towed pursuant to the authorization of the search warrant.

Detective Tassone and three other members of the department escorted defendant to the interview room in the detective division. At no time was he cuffed or restrained in any manner. Detective Tassone engaged in small talk with him while waiting for Detective Lee. The camera in the interview room began recording when defendant entered the room.

Detective Lee and Detective Peter Martin entered at approximately 8:14 p.m. The questioning concluded at approximately 12:24 a.m. on March 27<sup>th</sup>. At the conclusion, defendant was strip searched, his clothes were taken and he was processed. The following afternoon he returned and was questioned by Detective Kirby and Detective Lee. His entire time in the room on both dates was recorded. The recording on March 27 began at approximately 12:15 and ended at 2:25 p.m. Both recordings were marked in evidence and played in their entirety during the hearing.

On April 6, 2012, three fellow employees of Liberty Lines (Ismael Rodriguez, Michael Bruno, and Kevin Clifford) who worked with defendant for years on an almost daily basis were shown, separately and individually a photo of the defendant which each employee confirmed was defendant. Defense Counsel agrees these single photo displays were confirmatory.

### Conclusions of Law

#### Dunaway

Defendant contends at the point he was met at the terminal he was under arrest without probable cause. In determining whether an arrest is supported by probable cause, it is necessary to bear in mind that "we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" (Brinegar v. United States, 338 U.S. 160, 175, 69 S.Ct. 1302, 93 L.Ed. 1879, reh. denied 338 U.S. 839, 70 S.Ct. 31, 94 L.Ed. 513; see also, People v. Carrasquillo, 54 N.Y.2d 248, 254, 445 N.Y.S.2d 97, 429 N.E.2d 775).

Probable cause may be based upon the totality of knowledge possessed by a police

officer from information received and events personally observed. The determination of probable cause "is to be made after considering all the facts and circumstances together. Viewed singly, these may not be persuasive, yet when viewed together the puzzle may fit and probable cause found" (People v. Bigelow, 66 N.Y.2d 417, 423).

The family and friends' statements when they had last heard from Sabrina, the timing of the report of gun shots by a tenant, the statement by Sabrina's sister, the recovery of a family court paternity petition, the Superintendent's statement, the medical examiner's opinion on the time of death, and the identification of the defendant as the person on the video wearing a mask and long sleeve hoodie all combine to provide probable cause for defendant's arrest at the point the police meet the defendant in the bus terminal on March 26.

#### Statements of March 26 and March 27

Defendant contends he was in custody at the point he met the police in the bus terminal on March 26 and therefore the failure to administer Miranda warning requires the suppression of all ensuing statements.

The well-established standard for determining whether an individual is in custody is whether "a reasonable person, innocent of any crime would not have believed he was in custody under the circumstances" (People v. Centano, 76 N.Y.2d 837, 838, 560 N.Y.S.2d 121, 559 N.E.2d 1280; People v. Yuki, 25 N.Y.2d 585, 589, 307 N.Y.S.2d 857, 256 N.E.2d 172, cert. denied, 400 U.S. 851, 91 S.Ct. 78, 27 L.Ed.2d 89). The factors to be considered in making such a determination include "(1) the amount of time spent with

the police, (2) whether the person's freedom of action was restricted, (3) the location and atmosphere under which the questioning took place, (4) the degree of cooperation exhibited, (5) whether constitutional rights were administered, and (6) whether the questioning was investigatory or accusatory in nature" (People v. Mosley, 196 A.D.2d 893).

In deciding whether defendant was in custody prior to receiving Miranda warnings, subjective beliefs of a defendant are not to be the determinative factor, but rather what a reasonable man, innocent of any crime, would have thought had he been in the defendant's position. (People v. Yuki, 25 N.Y.2d 585). The video (no audio) of the interaction with the police combined with Detective Douglass's testimony establish that defendant voluntarily accompanied the police to the police station. The video shows defendant to be relaxed and cooperative. He is not physically seized or restrained in any manner. The encounter was brief. He was not subjected to questioning.

A close viewing of the audio visual recording of the March 26 interview leads this court to conclude that defendant was in custody at the point (approximately 8:28 p.m.) in which he asks the detective what the interview was really about and whether he was under arrest. Prior to this time, he was talking about his job as a bus driver and his family situation. At the point it turns to his girlfriend, his children, and the four or five month old baby, and the mothers of his children he asked the foregoing questions. At that point, notwithstanding the detective's answer (defendant was not under arrest), a reasonable person innocent of any crime would not have thought he was free to leave. It is at this point after he asked if he was under arrest that he is advised of each of his Miranda rights by Detective Lee. Defendant was given the Miranda card and appeared to read the front

and the waiver questions in the back. The People have established beyond a reasonable doubt that defendant was advised of his rights, acknowledged he understood his rights and by implication waived his right to remain silent and have an attorney when he continued to speak to the detectives. (see North Carolina v. Butler, 441 U.S. 369, People v. Daves, 55 N.Y.2d 731; People v. Sirno, 76 N.Y.2d 967). He acknowledged he understood his rights and continued to speak with the detectives. At approximately 10:08 p.m., defendant unequivocally requested to speak with an attorney. The detectives continued to question him until the early morning hours of the 27<sup>th</sup> and again in the afternoon of the 27<sup>th</sup>.

The District Attorney concedes all statements after he requested counsel are inadmissible on their case in chief. She seeks instead to cross examine the defendant on those statements for the purpose of impeachment in the event defendant testifies on his own behalf. The People argue that although there was a Miranda violation, defendant's statements after the invocation of his right to counsel were otherwise voluntary. Defense counsel asserts that the police interrogation tactics amounted to psychological coercion which should preclude any and all use of the statements.

It is black letter law that a statement obtained in violation of a defendant's right to counsel is inadmissible on the People's direct case but may be used to impeach a defendant's credibility if the statement was found to be voluntarily made (People v. Maerling, 64 N.Y.2d 134, 140 (1984); People v. Padron, 134 A.D.2d 625 (2d Dept. 1987), lv. denied, 71 N.Y.2d 900 (1988); People v. Taveras, 16 A.D.3d 164 (1<sup>st</sup> Dept. 2005), lv. denied, 5 N.Y.3d 770 (2005)). However, if a statement is found to be involuntarily made as a result of psychological coercion on the part of law enforcement, it is inadmissible for

all purposes (see People v. Padron, supra; People v. Walker, 110 A.D.2d 730 (2d Dept. 1985), aff'd, 67 N.Y.2d 776 (1986)). Courts suppress statements that are a result of psychological coercion because of the potential of such tactics to produce unreliable, false confessions (People v. Tarsia, 50 N.Y.2d 1, 10 (1980)). To determine voluntariness, a court must review all of the surrounding circumstances to see whether defendant's will has been overborne (People v. Mateo, 2 N.Y.2d 383, 413 (2004); People v. Anderson, 42 N.Y.2d 35, 38 (1977)). The statement's voluntary nature must be proved beyond a reasonable doubt (People v. Anderson, supra).

In determining whether a statement was obtained as a result of psychological coercion on the part of law enforcement, in addition to considering the police tactics used, the subjective state of the defendant must also be considered (see Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973)). Coercion may be found to exist if a defendant's will is overborne or if his statement was not the product of a rational intellect and free will (see People v. Kresberg, 183 A.D.2d 786 (2d Dept. 1992)). A defendant's age, maturity, intelligence, mental state and sophistication in dealing with the police are factors to be considered in this regard (see People v. Sakadinsky, 239 A.D.2d 443 (2d Dept. 1997), lv. denied, 90 N.Y.2d 897 (1997); People v. Nelson, 171 A.D.2d 702, 704 (2d Dept. 1991), lv. denied, 77 N.Y.2d 964 (1991); People v. Weiss, 102 Misc.2d 830, 833-34 (Sup. Ct. N.Y. Co. 1980)). Even highly coercive settings may be mitigated by a demonstration that a defendant had high intelligence, was versed in the law or was in general a skilled or experienced person (People v. Weiss, supra (citations omitted)).

During the first half of defendant's interrogation, which lasted for approximately 4

hours and 10 minutes on the evening of March 26, defendant was dressed in his work clothes and was seated in a corner of the interview room facing Detectives Lee and Martin. The interrogation was largely conducted by Detective Lee with Detective Martin present but, with the exception of a few comments, mostly silent. The questioning begins in a conversational manner with Detective Lee indicating to defendant that they just want to talk to him and defendant agrees he has no problem with that. Thereafter, Detective Lee asked defendant about his employment and family. As noted above, before asking defendant any questions about the crime or the victim, Detective Lee reads defendant his Miranda rights and defendant acknowledges them; he is also given the Miranda card to read and signs it at Detective Lee's request. Defendant is further advised that the statement is being recorded and defendant indicates that he has no problem with that as well.

During the interrogation, Detective Lee goes from being conversational with defendant to being aggressively accusatory, raising his voice and calling the defendant selfish, a liar and a "monster" who is "cold-blooded" and suggesting that no lawyer would want to represent him. He gives the defendant false information, such as initially suggesting that the victim is missing, before telling the defendant that she is dead; he also tells the defendant that the baby, defendant's daughter, is dead as well. At times he tells the defendant that he is looking to help him and tells him that he wants him to tell the truth so that he can "save" him and suggests that he, Detective Lee, is going to get in trouble for trying to help defendant. He suggests that defendant is adding years to his sentence by failing to tell the truth and states that defendant will not do well in prison. Detective Lee

also positions his chair very close to defendant, so that they are sitting almost knee to knee. Defendant is uncuffed during the first half of the interrogation, but Detective Lee cuffs one hand to the bar in the interview approximately halfway into it (at 10:14 p.m.). At one point defendant indicates that he has to go to the bathroom, and after a short delay, he is allowed to have a bathroom break.

After an overnight break during which defendant is able to sleep and is given breakfast, the interrogation continues on March 27 at 12:17 p.m., this time with Detective Patrick Kirby as the lead questioner, with Detective Lee in the room, but largely silent during the questioning. Defendant is dressed in jail clothing that was provided to him but is uncuffed for the entire interrogation. Defendant is again seated in the corner of the room with the Detectives seated facing him. Defendant's feet are bare and in response to the question regarding how he feels, he states that his feet are "frozen" and asks for something for them. Detective Lee indicates that he will "work on that" as defendant's property is sealed up. Detective Lee again reads defendant his Miranda rights, which defendant indicates he understands, and defendant agrees to speak with the detectives. Detective Lee again has defendant read the rights from the card and sign it.

The interrogation on March 27 is much different in tone from the interrogation the night before. For most of the questioning, Detective Kirby is seated knee to knee with defendant with only inches between them. Detective Kirby is friendly toward defendant and does not yell at him or become aggressively accusatory. At times, Detective Kirby pats defendant on his shoulder, arm or leg in a conversational gesture or puts his arm on defendant's shoulder while talking to him. At one point, they chuckle quietly together over

joking comments made by Detective Kirby regarding defendant's sex life and pornography collection. Detective Kirby speaks with defendant about his interviews of defendant's family members, and relates that defendant's wife and step daughter identified him as the individual in the surveillance photos taken from the victim's building on the night of the crime; while being interrogated by Detective Lee the previous evening, defendant was shown the photo and denied being the individual depicted therein. Detective Kirby also speaks to defendant about his son and asks defendant about what he would tell his family about this and what he would tell his son, who defendant refers to as "his man." Detective Kirby points out defendant's son is the brother of the victim's baby. He commends the way defendant is raising his son. Detective Kirby tells defendant that given what defendant has done for his son, like sending him to private school, something must have went wrong when he went to speak with the victim. While defendant continues to maintain that he did not kill the victim, he admits Detective Kirby that he went to the victim's apartment on the night in question. Defendant begins to cry at this point, which lasts for a few seconds. Detective Kirby puts his arm around defendant's shoulder and tells him its okay, because he knows defendant went there. Defendant repeatedly insists he did not kill the victim and Detective Kirby asks him to tell him what happened when defendant went to the victim's home. Defendant recounts the alleged conversation that he had with the victim and tells the detective that the victim was alive when he left her apartment. After exploring defendant's account of what happened, Detective Kirby asks him what he did with the mask and gloves defendant was wearing in the video and questions defendant about his explanations. At points during this exchange Detective Kirby touches defendant's arm or

puts his arm on his shoulder. After defendant denies numerous times that he shot the victim, Detective Kirby tells defendant in a matter of fact voice that "it happened" but that it was not intentional, it was an accident. He tells defendant that the victim wanted to hurt defendant, by having him pay child support that he could not afford, which defendant denies, saying that the victim only wanted him to pay for the baby's college. Detective Kirby tells defendant he needs him to explain it. After defendant again insists that the victim was alive when he left the apartment, Detective Lee takes a crime scene photo of the victim and shows it to the defendant. The defendant becomes agitated by the photo, and tells him "no no no no no. stop. I seen, for what" and repeats that he did not do that. Detective Kirby repeats that its not intentional, it's an accident. Defendant continues to state that he did not do that. When Detective Lee shows him the photo again, defendant says "No stop that man I did not do that." Defendant also says "you're not going to get me to say I did it cause I didn't" and notes that he admitted that he lied the night before by saying he wasn't there. Detective Kirby tells him that he did lie last night and that he (defendant) was partially lying now. Defendant continues to deny shooting the victim. Detective Kirby thanks defendant and tells him that he has something to tell defendant's son, that the truth is overwhelming for defendant and for defendant to look at what the truth is, he (defendant) sees a monster. Defendant denies being angry at the victim and maintains his denials about being involved in the crime. Detective Kirby tells defendant that it wasn't intentional, that defendant went there with a plan to scare the victim and that is why he wore the mask; in response defendant notes that he did not say 'scare', he said 'surprise' and Detective Kirby concedes that he is correct and used the wrong word.

When asked if he wore gloves because he was cold inside the victim's apartment, defendant states he gets cold and is "cold right now I'm sitting here talking to you" and that his feet are cold. Detective Kirby asks Detective Lee for one of the crime scene photos and asks defendant if that is the victim and defendant says yes and repeats that he didn't do that. Detective Kirby attempts to get defendant to hold onto the picture and defendant refuses stating "No I don't wanna hold onto that picture man cause I didn't do that." When Detective Kirby tells defendant that they were moving forward and they just needed a little bit more and defendant was doing well, defendant states "yeah you're tempting me, I had no gun." After a few more questions about the mask and who defendant was with when he was "goofing around" with the mask, Detective Kirby asks defendant if he needed a bathroom break, to which defendant replied yes. Detective Kirby says they will take a break to let defendant go to the bathroom and they will get something for defendant's feet. This occurs at approximately 2:15 p.m. When the parties return two minutes later, defendant is wearing socks, and when asked if they fit, he notes that they are a little small but beggars can't be choosers. After some more questions about the mask and the gloves, Detective Kirby again thanks defendant for "being as honest as [he] could right now". Defendant again denies shooting the victim and contradicts the detective when he tells him that by saying it doesn't make it the truth. Defendant is asked how he's feeling and he states he's a little tired. When asked again, he states he is understandably upset and again denies doing anything to the victim. When asked if White Plains Police Department treated him okay overall, defendant replied that "it's okay. Just need something on my feet." When asked by Detective Kirby about having something on his feet that tore

apart, defendant relates that an unidentified person told him that they didn't have anymore flip flops last night and was given paper ones. Detective Kirby apologizes for not getting him the socks faster, defendant replies "no no no its alright" and asks for his wife's number. Detective Kirby tells him that he will definitely make sure that defendant has that to make his phone call. The interrogation ends at 2:25 p.m.

The Court finds that when viewed under the totality of circumstances, defendant's statement was voluntarily made beyond a reasonable doubt and thus admissible for impeachment purposes at trial. Defendant is a 50 year old man without any prior criminal history who graduated high school and has been employed as a bus driver for over 19 years. When the interrogation is viewed as a whole, it is clear that the defendant's will is never overborne by what was very aggressive and hostile questioning by Detective Lee and by appeals to his emotions made by Detective Kirby. As to the statement made during the evening of March 26, despite the aggressive police tactics, defendant maintains his composure, reacts calmly even in the face of Detective Lee's harsh and confrontational questioning, is polite and well-spoken, answers intelligently and confidently in a largely even-voiced tone and is cooperative. Even when Detective Lee is insulting and belittling to him, defendant remains composed and repeatedly and strongly disavows having anything to do with the crime. He does not react to Detective Lee's name-calling. He also demonstrates an awareness of his rights, indicating that he did not "lawyer up" because he did not do anything. In sum, Detective Lee's pressure tactics entirely failed to sway defendant into providing a confession.

As to Detective Kirby's interrogation on March 27, during the vast majority of the

questioning, defendant again appears confident, composed, polite, intelligent and cooperative, with the exception of when he lost his composure and cried for a few seconds after admitting that he was at the victim's apartment on the night in question and when he became agitated upon seeing the crime scene photo of the victim. Again, at no time does it appear that defendant's will was overborne by the questioning. While defendant did admit that he was present at the victim's apartment on the evening in question, this was more a concession to reality than the result of Detective Kirby's efforts, given that defendant viewed the surveillance photos and was informed that he had been identified as being at the scene. Indeed, aside from maintaining his innocence innumerable times throughout the entire interrogation, defendant is able to assert his will to contradict and correct Detective Kirby when asked about wanting to scare the victim; defendant asserts himself to note that "scared" was not the word he used. He is also able to assert himself in refusing to hold the crime scene photo when asked to by Detective Kirby. In any event, it has been held that displaying a photograph of a homicide victim to a suspect is not a coercive tactic (People v. Wong, 223 A.D.2d 482, 483 (1<sup>st</sup> Dept. 1996)). Defendant also feels comfortable enough with the Detectives to ask them to get him his wife's phone number. While defendant noted his feet were cold at the beginning of the interrogation and was not provided socks until about two hours later, defendant did not appear physically uncomfortable and about fifteen minutes after raising the issue the second time, the Detectives take a break and find him socks. Moreover, there is no indication that defendant was intentionally denied socks in any effort to deprive him of physical comforts to obtain a statement (cf. People v. Anderson, supra), but rather because the paper flip

flops he was given were apparently torn. When asked about it, defendant stated it was all right. While the interrogations were somewhat long, they were not unduly so and defendant did not appear overtly fatigued by them (see People v. Gerald, 128 A.D.2d 635, 636 (2d Dept. 1987) (six hour custodial interrogation held not be coercive)). Moreover, defendant never asks to end the questioning, which is terminated on both occasions by the Detectives themselves. When defendant does say "stop", the context of his statements make clear that he was referring to being shown the crime scene photo as opposed to asking to halt the questioning. While the defense submits that, given that the police ignored defendant's request for counsel, defendant could expect them to ignore any request to end the questioning and posits this as the basis for his failure to ask them to stop, this argument is speculative and not a reasonable inference considering the totality of the circumstances of the interrogation as set forth above.

In sum, the totality of the circumstances of defendant's age, education and experience, his demonstrated intelligent and articulate nature, his understanding of his rights and ability to assert his will during the interrogation, as well as his demeanor and reactions under aggressive questioning, demonstrates beyond a reasonable doubt that defendant's statement was voluntarily made and strongly belies the argument that defendant was psychologically coerced into making his statement. Here, defendant never confesses to the murder of Sabrina Durrah; to the contrary, he staunchly maintains his innocence.

Accordingly, the Court finds that the statement was not the product of psychologically coercive tactics by the police, but rather was voluntarily made by defendant


beyond a reasonable doubt and is thus admissible for impeachment purposes (People v. White, 259 A.D.2d 508 (2d Dept. 1999), lv. denied, 93 N.Y.2d 981 (1999); cf. People v. Anderson, supra) (defendant's statement found to be the product of psychological coercion where he was questioned without benefit of Miranda rights for 19 hours straight in a hostile environment without the opportunity to sleep while being deprived of food and drink).

Identification

With regard to the one photo display to Martinez and Abrams, both procedures were merely confirmatory based on their prior personal knowledge of the defendant (People v. Rodriguez, 79 NY2d 445).

The foregoing constitutes the decision and order of the court.

Dated: White Plains, New York  
February 22, 2013

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE