

**People v Murray**

2014 NY Slip Op 33758(U)

January 22, 2014

Supreme Court, Westchester County

Docket Number: 12-1281

Judge: Barbara G. Zambelli

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JAN 23 2014

FILED  
AND ENTERED  
ON JANUARY 23 2014  
WESTCHESTER  
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

- against -

JOHN MURRAY and BEATRICE CAMPER,

Defendants.

Indictment No: 12-1281

CONSOLIDATED  
DECISION AFTER HEARING

-----X  
ZAMBELLI, J.

The defendant, JOHN MURRAY has been indicted for the crimes of murder in the first degree, murder in the second degree and criminal possession of a weapon in the second degree allegedly committed on or about October 3, 2012 in the County of Westchester and the defendant, BEATRICE CAMPER, has been indicted for the crime of murder in the second degree allegedly committed on or about October 3, 2012 in the County of Westchester.

By decision and order dated March 7, 2013, the undersigned granted Defendant, JOHN MURRAY's motion to suppress solely to the extent of ordering Huntley and Rodriguez hearings.

By decision and order dated March 8, 2013, the undersigned granted Defendant, BEATRICE CAMPER's motion to suppress solely to the extent of ordering a Huntley hearing.

The following people testified: Peekskill Police Department: Sergeant Ray

Henderlong, Police Officer Elizabeth Folch, Police Officer Joseph McGann, Detective Marco Martinez, Detective Todd Gallaher, and Detective Ralph D'Aliso; Newburgh Police Officer Mike Pitt, New York State Trooper Jason Bidacovich.

#### FINDINGS OF FACT

The credible testimony adduced at the hearing on this case established that on October 3, 2012 at approximately 2:15 p.m., members of the Peekskill Police Department responded to a dispatch following a 911 call from postal worker Shirley Hewitt reporting a dead man in a car at the location of 118 Pine Street. Upon arrival at the scene, Detective Gallaher, Detective Martinez and Sergeant Henderlong observed a gray Mercury Marquis parked in the opposite direction a short distance from the curb. The drivers side window was down.

Terry Camper, a Peekskill resident and cab driver known to them, was slumped behind the wheel with two gunshot wounds in the back of his head. The keys to his car were missing. The investigation later revealed the victim's cell phone and \$23.00 cash from his wallet were missing.

The victim was brought to the Hudson Valley Hospital by ambulance whereupon he was pronounced dead at 3:05 p.m. Detective Martinez followed the ambulance to the hospital and collected the victim's clothing. The victim's wife, the defendant, Beatrice Camper, was in the hallway of the hospital, hysterically crying. The detective spoke to her briefly. She said she last spoke to her husband at approximately 1:45 p.m. Detective Martinez asked her if he (Terry) had any money on him and she told the detective Terry should have had money on him because he had an airport run earlier that day. Detective

Martinez also met Ruth Smith at the hospital who was a good friend fo the victim. She told the detectives she had gone to a furniture store with the victim in Connecticut earlier that day. He gave her rides regularly to and from her work. She had been with the victim in his car when he received a call from a 201 or 203 number which the victim had not recognized and could not understand what the caller was saying. The victim gave Ruth Smith the phone. She did not recognize the caller's number or the caller. The caller asked to be picked up at 118 Pine Street to be taken to Hampton Oaks Apartments. The call was received at approximately 1:15 p.m. Ms. Smith was dropped off at work at 1:20 p.m. Ms. Smith gave the police Terry's cell phone number. The police contacted Sprint to obtain information on the victim's missing cell phone. Sprint provided the police with a record which contained the longitude and latitude of the victim's missing phone. A search of the area along 9W in Orange County near the West Point golf course resulted in the recovery of the victim's cell phone under a guard rail along 9W. After receiving further information from the recovered cell phone, the police located a call received by the victim at 1:20 p.m. from a 201-892-0274 number. The number belonged to a boost mobile. The police obtained call detail records for that phone number. The subscriber was listed as a Carlos Antonio. The call detail records showed a call from a phone number listed to Sandra Dolman. Upon speaking with Ms. Dolman, the police learned that the 201 number was defendant Murray's number. Dolman had called Murray to let him know that Terry Camper had been killed because she knew defendant was friendly with Terry Camper's wife, Beatrice. The police also learned that Murray had been convicted of murder and had been released November 2011. He lived at 180 Liberty Street in Newburgh. Further

checking established that the 201 number had bounced off cell towers in the Peekskill area including the area of Pine Street earlier that day. Investigation further revealed that defendant Murray drove a red Dodge Neon which was registered to his wife. The police had obtained information about Murray's vehicle from a traffic summons Murray had been issued in September 2012. Cameras monitoring the Bear Mountain Bridge at 1:00 p.m. on October 3, showed defendant's red Dodge Neon on camera. His same vehicle was also shown at 2:00 p.m. that same day heading toward Orange County.

A picture of the defendant was obtained by the police through the e-justice system. They brought the picture to Beatrice Camper at her apartment 1101 Brown Street, Peekskill, at approximately 10:30 p.m. the night of October 3. Detective Martinez and Sergeant Henderlong told her that they had developed a suspect and wanted to show her a photo. They knocked on the door and Camper invited them in. She was with her daughter and granddaughter. They showed her a photo of Murray. She looked at the photo anywhere from 20 seconds to approximately 3 - 4 minutes while Detective Martinez asked her whether she recognized him or did she know him, did he look familiar. She said she did not recognize him but while continuing to look at the picture she stated he may have dated her sister in prison, she last saw him in the 1980's while he was in prison. She did not know his name. The police asked her to call her sister to see if she could tell him his name. She called her sister twice. She left a message the first time and put the phone on speaker the second time. The police were at the house for twenty to forty minutes.

Shortly after midnight on October 4<sup>th</sup>, Detectives Joseph McGann and Malfitano of the Peekskill Police Department as well as two other members of the Peekskill Police

Department and two members of the Newburgh Police Department went to Murray's address at 180 Liberty Street, Newburgh. Detective McGann and Detective Malfitano approached the house while the others remained outside. Detective McGann thought the house was an apartment house or a house that was "chopped" meaning divided into units for more than one family. It was an old house with three floors. The front door was unlocked and there was a large vestibule which was well lit. Their badges were displayed. They wore vests marked "Police." They knocked on the front door and entered. A female came down the stairs, Mrs. Patricia Murray. The detectives stayed in the vestibule. Detective McGann identified themselves and apologized for the late hour but asked if they could speak with Murray about a serious incident that happened earlier in the day. Murray appeared at the top of the stairs. They identified themselves and repeated they would like to speak to him regarding a serious incident that occurred earlier in the day which he may or may not be involved with. Murray was a little angry. He was on parole and concerned about a parole violation. They told him it did not involve his parole and they needed about twenty minutes of his time. They asked him if he needed a ride or would he drive on his own. Mrs. Murray told her husband to go with them to take care of it. He told her to get him some clothes. He left the house and got into Newburgh Police Officer Pitt's police vehicle. He was not cuffed or restrained in any way. There was no conversation en route to Newburgh police headquarters which was a one and ½ minute drive. Police Officer Pitt had no conversation with Murray. He escorted Murray into the lobby of the police station and waited approximately three minutes for the detectives to arrive. At no time was Murray cuffed or restrained. Murray was brought into the interview room in the detective division.

When Detective Martinez and Sergeant Henderlong arrived in the interview room at approximately 1:15 a.m., defendant Murray was already seated. He was not cuffed. He had a bottle of water. The interview was recorded and played in court. Defendant never requested an attorney prior to the recording. They engaged in chit chat with Murray for less than one minute prior to the recording. Defendant was advised of each of his Miranda rights, acknowledged he understood his rights and spoke to the detectives. He signed the Miranda warning form in evidence as Exhibit 3 wherein he was advised he was not under arrest and was free to leave. The stops in the tape are part of the recording system. The clock on the recording never stopped running. When he invoked his right to counsel; all questioning ceased. They spoke approximately 2-3 minutes after questioning ceased but nothing about the case. He was free to go and left. The detectives returned to Peekskill at approximately 3:00 a.m.

Later that day, October 4, defendant was placed under arrest for the murder of Terry Camper.

On October 4, at approximately 2:50 p.m. Beatrice Camper met with the detectives in police headquarters. They had asked her to come into the Peekskill Detective Division to speak with them which she readily agreed to do. Her interview was recorded in its entirety, concluding at 8:53 p.m. and admitted in evidence as Exhibit 7 and played during the hearing. The Miranda warnings form signed by her is in evidence as Exhibit 1. She signed both sides of a written consent to search which is in evidence as Exhibit 2. The interview room is 10 x 12 feet, with a window, table and chairs. The door to the room locks automatically requiring a fob to open. Sergeant Henderlong interviewed her until 7:29 p.m.

At 7:30 p.m. Detectives D'Aliso and Gallaher interviewed her until approximately 8:34 p.m. after which Police Officer Forch sat with her until 8:53 p.m. as a matron until she could be transported to the county jail. While Police Officer Forch was talking to her, she had a back spasm. Medical personnel were summoned. She did not want to go to the hospital and was cleared by the medics.

At approximately 11:19 p.m. on October 4, Murray was produced in the interview room at Peekskill headquarters following his arrest. He was cuffed to the bar in the interview room. Detective Henderlong and Detective Martinez were going over his personal effects. This interaction was recorded and admitted into evidence as Exhibit 5. Without having been read his Miranda rights, Sergeant Henderlong told him his girlfriend had been arrested to which he responded that he did not have a girlfriend. The Sergeant explained at the hearing he was giving the defendant information on what he was being arrested for.

On October 5, Detectives McGann and Malfitano were instructed to go to Camper's apartment to conduct a search for evidence pursuant to the written consent to search signed by defendant Camper the previous day. A list of evidence recovered was admitted into evidence as Exhibit 150.

New York State Trooper Jason Bidacovich testified before the Grand Jury. He was the trooper who stopped defendant's vehicle on September 2, 2012 for speeding and issued defendant uniform traffic tickets, in evidence as Exhibit 113, for no stop lamp as well as speeding. He made a copy of defendant's photo permit. He was with the defendant for several minutes. His identification of the defendant from a single photo in the Grand Jury

was merely confirmatory. Sergeant Henderlong's identification of Murray from a single photo in the Grand Jury was merely confirmatory as well.

### CONCLUSIONS OF LAW

#### Murray's statements on October 4 at 1:15 a.m. in the Newburgh Police Department

Defendant contends 1) He was in custody when he was taken to the police department; 2) the whole tape was not played; 3) and that his exercise of his right to counsel was not on the tape.

In deciding whether defendant was in custody prior to receiving Miranda warnings, subjective beliefs of 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 defendant's position, (People v. Yuki, 25 N.Y.2d 585).

The evidence in this case established that defendant voluntarily accompanied the police to the Newburgh police station. He was asked to come by two detectives. The other officers were outside on the sidewalk. He went on his own to a Newburgh police vehicle unescorted. He was not restrained, cuffed or coerced. His wife told him to go and take care of whatever it was. There was no command or demand by the police. Thus, a reasonable person innocent of any crime would not have thought he was in custody (See, People v. Glasper, 160 A.D.2d 723, app den 76 N.Y.2d 788). Moreover, since there is no evidence that he made any statements after leaving the house and before receiving Miranda warnings the issue is moot.

The evidence further established that while in the interview room defendant was advised of his Miranda rights and knowingly, voluntarily and intelligently waived his rights

prior to speaking to the detectives. He was advised he was not under arrest and he was free to leave at any time. The moment he requested counsel, the questioning ceased. There is no evidence that defendant at any earlier time exercised his right to counsel. After exercising his right to counsel, he left on his own.

The People announced prior to the start of the hearing they would not be playing the entire recording as they would not use his request for counsel on their case in chief. Defense counsel voiced no objection to this procedure nor has he advanced a reason why the People should be required to let the jury hear the exercise of his right to counsel on their case in chief.

**Defendant Murray's Statements following his arrest on October 4 at approximately 11:19 p.m.**

The People assert this statement was spontaneous. Defendant asserts the statement was involuntarily made.

"The test of whether a custodial statement is spontaneous is "whether defendant spoke with genuine spontaneity and not the result of inducement, provocation, encouragement or acquiescence, no matter how subtly employed" (People v. Maerling, 46 N.Y.2d 289, 302-303).

The statement to defendant Murray by Sergeant Henderlong after defendant's arrest and prior to Miranda warnings that they had arrested his girlfriend if not intended to get a reaction from the defendant was very likely to get a reaction from the defendant. Thus, the statement was not spontaneous within the meaning of the law. The motion to suppress is granted. The People are barred from using the statement on their case in chief but may use the statement on cross examination in the event the defendant Murray testifies on his

own behalf.

**Defendant Camper's statements to the Detective in Hudson Valley Hospital on October 3**

The testimony at the hearing clearly established that Detective Martinez's conversation with defendant in the hallway of the hospital was not the product of custodial interrogation. The detective was simply talking to the wife of the victim in order to obtain information to help in the investigation of the murder of her husband. (See, People v. Yukl, supra)

**Statements in Defendant Camper's home on October 3 at approximately 10:30 p.m.**

Detective Martinez and Sergeant Henderlong were invited into defendant's home. Her daughter and grandchild were present. Their purpose was to seek her assistance in the investigation by showing her a picture of Murray. At no time was she restrained in any manner. The questions were investigatory, not accusatory. The court finds her statements were not the product of custodial investigation and were in all respects voluntarily made (See, People v. Paulin, 25 N.Y.2d 607).

**Defendant Camper's Statements in the Peekskill Police Department interview room on October 4 from 2:50 p.m. to 8:53 p.m.**

The defendant argues her statements must be suppressed as involuntary on the grounds she was interrogated for six hours, she was cold, in pain, the police engaged in improper trickery by telling her she would be allowed to go home, she was only read her Miranda warnings once, and she suffered a seizure.

The People assert that defendant's statements were voluntary. She voluntarily appeared at the detective division. She was not restrained in any way. Her personal

effects were not taken from her. She was free to go to the bathroom. She was given food and water. She was asked if she was too cold or if she needed something. She was given a blanket. She was read each of her Miranda rights which advised her she was not under arrest. She knowingly, voluntarily, and intelligently waived her rights.

"To determine voluntariness, courts review all of the surrounding circumstances to see whether the defendant's will has been overborne (People v. Anderson, 42 N.Y.2d 35 at 38, 396 N.Y.S.2d 625, 364 N.E.2d 1318; Arizona v. Fulminate, 499 U.S. 279, 285-286, 111 S.Ct. 1246, 113 L.Ed 302 [1991]). Of course, "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment" (Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 [1986])" (People v. Mateo, 2 N.Y.3d 383 at 413). "The voluntariness of a confession is to be determined by examining the totality of the circumstances surrounding the confession (see, People v. Sohn, 148 A.D.2d 588, 529 N.Y.S.2d 194). The factors to be weighed include the amount of time the defendant spent with the police, the manner, if any, in which his freedom was restricted, the location and atmosphere of his questioning, the degree of cooperation which he exhibited, whether he was apprised of his constitutional rights, and whether the questioning was investigatory or accusatory in nature" (People v. Coggins, 234 A.D.2d 469, 470).

Defendant, a 60 year old woman, readily agreed to appear to answer questions about the death of her husband. She arrived in the detective division voluntarily. She was not restrained or cuffed. She was cooperative. She knew of and liked the Sergeant. The Sergeant knew and liked her husband. A person, innocent of any crime, would not have

believed she was in custody (People v. Yuki, *supra*).

She was read each of her Miranda rights prior to questioning. She understood her rights and agreed to answer their questions.

The questioning became custodial when she acknowledged making inconsistent statements and asked about going home.

Sergeant Henderlong was soft spoken. He was patient, comforting, considerate and non threatening. None of the detectives were overbearing. She was not brow beaten. (See, People v. Abreu, 184 A.D.2d 707, appeal denied 80 N.Y.2d 972). She was generally calm. The tone of the questioning was not accusatory. Her demeanor at times was assertive and persuasive. She was also apologetic and remorseful. At times she wanted to be reassured. She held their hands. She asked for a hug. There were times she complained about her back pain or that she was cold. Her complaints were brief and generally addressed by the Sergeant or the detectives. She was given frequent breaks where she seemed to nap. The questioning occurred in the afternoon and early night. She moved around the room freely. She was allowed to smoke, go to the bathroom, given food and water and a blanket when she became too cold (See, People v. Betancourt, 106 A.D. 3d 831; People v. Garcia, 216 A.D.2d 319, appeal denied 86 N.Y.2d 842; People v. Towndrow, 236 A.D.2d 821; appeal denied 89 N.Y. 2d 1016).

She was properly advised of her Miranda warnings and made a knowing, voluntary and intelligent waiver of those warnings before speaking with the Sergeant (See, Miranda v. Arizona, 384 U.S. 436). During the ensuing six hours she did not refuse to answer their questions. She was reminded by Sergeant Henderlong that if she did not want to answer

a question, she should just say so (See, People v. Smith, 208 A.D. 2d 966). Although she wanted to go home, she did not affirmatively or unequivocally state she was going home. Although she may have been led to believe she would go home, this strategy was not so fundamentally unfair as to deny her due process or induce a false confession (See, People v. Peters, 157 A.D.2d 806, appeal denied 76 N.Y.2d 740; People v. Lugo, 60 A.D.3d 867). Similarly, being told being honest would help her was not so fundamentally unfair as to deny her due process or induce a false confession (People v. Tarsia, 50 N.Y.2d 1, 11; People v. Madison, 135 A.D.2d 655, 656-570, aff'd 73 N.Y.2d 810; People v. Richardson, 202 A.D.2d 958). At the end when she stated she wanted to go home, she cried, expressing her remorse by asking her husband for forgiveness. The detectives comforted her and ceased questioning. She suffered a brief back spasm while speaking with Police Officer Forch. Medical help was summoned but she declined medical treatment.

Viewing the totality of the circumstances, her will was not overborne by improper police tactics.

Accordingly, for the foregoing reasons, the court concludes the People have met their burden of proving defendant's statements were voluntary.

**Written Consent to Search**

"Consent to search is voluntary when it is true act of will, an unequivocal product of essentially free and unconstrained choice; voluntariness is incompatible with official coercion, actual or implicit, overt or subtle." (People v. Gonzalez, 39 N.Y.2d 122 at 128).

The video establishes that defendant voluntarily signed both sides of the consent form.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
January 22, 2014

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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