

People v Garner
2014 NY Slip Op 33767(U)
January 16, 2014
County Court, Westchester County
Docket Number: 13-0482
Judge: Barbara G. Zambelli
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JAN 17 2014

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COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON JANUARY 17, 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 -

KENYATTA GARNER,

Defendant.

-----X
ZAMBELLI, J.

Indictment No: 13-0482

DECISION AFTER HEARING

The defendant has been indicted for the crimes of two counts of Criminal Negligent Homicide, two counts of Assault in the Third Degree, Unauthorized Use of a Motor Vehicle in the Third Degree and Speeding in violation of Vehicle and Traffic Law § 1180(b) on or about July 8, 2012, in the County of Westchester.

By decision and order dated August 13, 2013 and entered on August 14, 2013, the Honorable Robert A. Neary ordered a pretrial Huntley hearing to determine the admissibility of the defendant's statements. The hearing was held on January 16, 2014 wherein Detective Kenneth Perry, Police Officer James Rosselli, and Sergeant Robert Pavone of the Westchester County Department of Public Safety gave testimony.

FINDINGS OF FACT

The credible testimony adduced at the hearing on this case established that on July 8, 2012 at approximately 12:17 p.m., Detective Kenneth Perry reported to the scene of a traffic accident in the vicinity of the Saw Mill Parkway South at the Rumsey Road exit in the

City of Yonkers.

Upon arriving at this location he observed two bodies in the roadway, unresponsive; a female on the grassy shoulder screaming, and a vehicle down the roadway with another male squatting along the barrier. The scene was chaotic with many people around. The male squatting along the barrier was defendant. He was screaming for help; stating his skin was burning. His face and shirt were covered with blood. The detective identified himself and asked defendant who was driving. Defendant said he had been driving. The detective requested medics to attend to defendant. Police Officer Rosselli, in uniform, was assigned to go to Jacobi Hospital in the Bronx where he arrived at 2:53 p.m. that day to investigate the cause of the accident including whether the driver was impaired by alcohol or drugs. He met with emergency room staff, two female occupants of the vehicle, and the driver of the vehicle. He went to defendant's room where he identified himself and asked defendant if he was the driver and what had happened. Defendant was in a lot of pain. He had on an oxygen mask. There were lacerations on his hands and arms. He was laying on a stretcher in a room. There were IVs attached to him but he was fully conscious and spoke clearly. Defendant stated he was driving and lost control as he entered the curve on the road. Detective Peters was present while Police Officer Rosselli spoke with Defendant. Sergeant Pavone and Sergeant Harrison were assigned to speak to the defendant in furtherance of the investigation into the cause of the accident which had resulted in fatalities. They were unable to speak to him on two occasions since he was intubated. On July 20, they went to his hospital room where he was in a room by himself. He was no longer intubated. He was alert and conscious. He said he was in pain,

coughing up fluid. He used a suction tube. He was the only patient in the room. At the time the Sergeants appeared, they had not concluded their investigation. There was no indication that criminally negligent homicide charges would be filed. In fact, no charges were made until months later. At the time they visited the defendant, approximately 4:30 p.m. that day, they had information from witness depositions that the witnesses thought defendant was driving 80 or 90 miles per hour. The Sergeants identified themselves and told him they were investigating the accident. Defendant did not remember if there were people in the car. When told by the Sergeant that they had information he was driving at 90 mph, defendant stated that 90 mph did not sound half wrong, he likes to drive fast. The Sergeants were there for only a few minutes.

CONCLUSIONS OF LAW

The statements defendant made to Detective Perry are admissible in as much as the questions posed to him were not the product of custodial investigation but were for the purpose of investigating the cause of the traffic accident. Thus, defendant's statements are admissible at trial. (See, People v. Steinhilber, 48 A.D.3d 958).

The questions asked of defendant in the Emergency Room on the same day were not the product of custodial interrogation which required Miranda warnings. The officer was investigating a traffic accident which had resulted in fatalities: Defendant, although in pain and unable to leave, spoke clearly and was not the subject of a coercive police presence or accusatorial questioning. (See, People v. Meissler, 305 A.D.2d, 724, leave to appeal denied 100 N.Y.2d 644).

For the same reasons, defendant's statements to the Sergeants on July 20 were not the product of custodial interrogation and are therefore admissible. The investigation was ongoing. No decision had been made as to any criminal wrongdoing. They were still far away from making any such decision. The questioning was not accusatory. The questioning was not under "circumstances which were likely to affect substantially the individual's will to resist and compel him to speak where he would not otherwise do so freely" (People v. Phinney, 22 N.Y.2d 288, See also, People v. Bongiorno, 243 A.D.2d 719; People v. Clayborn, 90 A.D.2d 597). They were with defendant for only a few minutes. At no time did he tell them he did not want to talk to them or that he wanted them to leave.

Accordingly, for the foregoing reasons, the motion to suppress is in all respects denied.

Dated: White Plains, New York
January 16, 2014



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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