

People v Stahl

2015 NY Slip Op 32921(U)

April 24, 2015

County Court, Ulster County

Docket Number: 132-14

Judge: Donald A. Williams

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C14-547

STATE OF NEW YORK
COUNTY COURT

COUNTY OF ULSTER

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION
Indictment No. 132-14

KENNETH STAHLI,

Defendant.

Appearances:

For the People:

D. Holley Carnright, District Attorney,
by D. Holley Carnright, District Attorney

For the Defendant:

MariAnn Connelly, Esq.

WILLIAMS, J.

FILED
JUN 11 2015
NINA POSTUPACK
ULSTER COUNTY CLERK

On March 5, 2015, and March 6, 2015, the Court conducted a combined *Huntley/Dunaway/Mapp/Audibility/Visibility* hearing in this case. Set forth below are the Court's Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On the afternoon of August 5, 2014, New York State Police Investigator Mario Restivo was assigned to the investigation into the death of two-year-old Mason DeCosmo. At the time of his death, Mason resided at 16 Walnut Park Lane, Milton, New York, with his mother, Katlin Wolfert, and the defendant, Kenneth Stahli. Although at the time Investigator Restivo was first assigned to this investigation an autopsy had not yet been performed, other members of the New York State Police had observed multiple bruises visible on Mason's body. Otherwise, Mason was reported to be a healthy child. Investigator Restivo's assignment was to locate and interview the defendant, one of Mason's primary caregivers.

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Investigator Restivo located the defendant at the Town of Lloyd Court and requested that he voluntarily accompany him to the Highland State Police barracks to be interviewed "about an incident that happened in the trailer." The defendant agreed. Since the defendant had no vehicle, Investigator Restivo drove him to the barracks.

Once they arrived, the defendant was brought to an interview room. There, at approximately 5:00 p.m., Investigator Restivo commenced the interview. The entire interview was recorded.

After obtaining some brief pedigree information, Investigator Restivo read the defendant the *Miranda* warnings, which the defendant knowingly, intelligently and voluntarily waived. The interview proceeded and continued until approximately 4:00 a.m. During the interview, the defendant was not restrained in any way, was offered something to drink and was given multiple cigarette and bathroom breaks. Although the interview became contentious at times, the defendant remained engaged and cooperative. Throughout the interview, the defendant denied that he was responsible for causing any harm to Mason. At the conclusion of the interview, the defendant agreed to speak with Investigator Restivo the next day and then was driven home by Investigator Restivo. During the suppression hearing Investigator Restivo testified that the defendant was not in custody during this interview and always remained free to leave.

The next day, August 6, 2014, at approximately 9:30 a.m., Investigator Restivo and Investigator James Brown drove to the defendant's residence in Milton, New York. When they first arrived, they did not observe any activity at the residence. As a result, they parked at a gas station across the street and waited. Thereafter, the defendant came out of his residence,

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waived to the investigators, walked across the street to their location and entered their vehicle. They all then proceeded to the New York State Police barracks in Kingston, New York.

Once they arrived at the Kingston barracks, the defendant was brought to an interview room. There, at approximately 3:30 p.m., the defendant met with New York State Police Investigator Brian Hammer. At the outset, Investigator Hammer indicated that he wished to administer a polygraph examination and the defendant consented thereto. As part of the protocols for the administration of the polygraph examination, Investigator Hammer explained the testing procedure, provided the defendant with an opportunity to submit questions that he wanted asked of him and informed the defendant of the specific questions that he would be asked. Also, as part of those protocols, Investigator Hammer reviewed the defendant's knowledge and understanding of the *Miranda* warnings in an unconventional question and answer format. While unconventional, those questions and answers clearly established that the defendant understood and was waiving those rights. Thereafter, the examination was administered. It concluded at approximately 7:50 p.m.

After the polygraph examination was completed, Investigator Hammer questioned the defendant for approximately 40 minutes. During that interview, the defendant, for the first time, admitted that he was responsible for some of the injuries Mason had sustained.

Throughout the administration of the polygraph examination and the subsequent interview, the defendant was not restrained in any way, was offered breaks and remained cooperative. Neither the administration of the polygraph examination, nor the interview which followed, were recorded.

Nevertheless, given all the facts and circumstances that existed at the time that the

defendant made the first admission of injuring Mason to Investigator Hammer, the Court finds that it was at this point that he was first in custody.

It was immediately before, or during the administration of the polygraph examination, that Investigator Restivo was first informed of the results of the autopsy performed upon the remains of Mason DeCosmo. He learned that Mason had died of internal injuries consistent with blunt force trauma to his abdomen and head.

Beginning at approximately 8:30 p.m., Investigator Restivo commenced his interview of the defendant. That interview continued until approximately 11:30 p.m. The entire interview was recorded. During this final interview the defendant was not restrained in any way, was given breaks and remained cooperative. It was also during this interview that the defendant made admissions of causing additional injuries to Mason. At the conclusion of that interview, the defendant was placed under arrest.

Meanwhile, on August 5, 2014, at approximately 9:30 p.m., New York State Police Investigator David Piliero-Kinderman met with Katlin Wolfert at the Vassar Brothers Hospital in Poughkeepsie, New York. At that time he requested, and she signed, a voluntary consent to search her residence located at 16 Walnut Park Lane, Milton, New York. A broken bed and cans used to support that bed, along with other evidence that the People do not seek to introduce at trial, were seized. Additionally, during that search the premises was photographed.

At the time of that search, members of the State Police had also obtained a search warrant for that premises from Town of Marlboro Judge Michael Kraiza.

Finally, on August 11, 2014, Child Protective Services Caseworker Timothy Crispell went to the Ulster County Jail and conducted an interview of the defendant. During that

interview, the defendant repeated many of the admissions that he had previously made to members of the State Police.

CONCLUSIONS OF LAW

Dunaway– (i) August 5, 2014– The Court finds that on August 5, 2014, the defendant voluntarily agreed to accompany Investigator Restivo to the New York State Police barracks in Highland, New York, to be interviewed. Accordingly, probable cause is not an issue (*People v. Yager*, 289 A.D. 2nd 1073 [4th Dept. 2001]; *People v. Vogler*, 201 A.D. 2nd 890 [4th Dept. 1994]).

(ii) August 6, 2014– The Court finds that on August 6, 2014, the defendant voluntarily agreed to accompany Investigator Restivo to the New York State Police barracks in Kingston, New York, to be interviewed. Accordingly, probable cause is not an issue (*People v. Yager, supra*; *People v. Vogler, supra*).

Huntley– (i) August 5, 2014, Statements to Investigator Restivo – The Court finds that these statements were not the product of custodial interrogation and, therefore, the *Miranda* warnings were not necessary. In any event, at the outset of the interview, the defendant was fully and properly advised of the *Miranda* warnings which he knowingly, intelligently and voluntarily waived. The defendant does not contest the voluntariness of these statements in the traditional sense.

(ii) August 6, 2014, Statements to Investigator Hammer– The Court finds that these statements were not the product of custodial interrogation and, therefore, the *Miranda* warnings were not necessary. In any event, prior to any interrogation, Investigator Hammer

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reviewed the *Miranda* warnings with the defendant and obtained a knowing, intelligent and voluntary waiver of those rights. Again, the defendant does not contest the voluntariness of these statements in the traditional sense.

(iii) August 6, 2014, Statements to Investigator Restivo – Although these statements were the product of custodial interrogation, the Court finds that prior to the questioning by Investigator Restivo, Investigator Hammer had obtained a knowing, intelligent and voluntary waiver of the *Miranda* rights from the defendant. Readministration of those warnings was not necessary since the defendant remained continuously at the State Police barracks, was not subjected to coercive tactics and any delay in questioning was not excessive (*People v. Dayton*, 66 A.D. 3rd 797 [2nd Dept. 2009]; *People v. Carelli*, 41 A.D. 2nd 1092 [3rd Dept. 2007]). Once again, the defendant does not contest the voluntariness of these statements in the traditional sense.

(iv) August 11, 2014, Statements to Caseworker Timothy Crispell - The People concede that these statements cannot be used on their case-in-chief. However, since the defendant is not contesting the voluntariness of these statements in the traditional sense, they may be used to impeach his credibility should he elect to testify at trial.

Mapp - The Court finds that the residence located at 16 Walnut Park Lane in Milton, New York, was searched pursuant to the voluntary consent of Katlin Wolfert, that she resided at that residence and, therefore, had the requisite authority to consent thereto.

The Court has also reviewed the search warrant issued by Town of Marlboro Judge Kraiza for 16 Walnut Park Lane. While the broken bed and the cans used to support that bed are not specifically named in the warrant, the defense has stipulated that the

admissibility of those items will be determined by this Court's probable cause determination based on a review of the four corners of the warrant and has further stipulated that they are not contesting the execution of that warrant. Accordingly, the Court finds that the warrant is supported by probable cause and that it, therefore, supplies an additional or alternative lawful ground for the search and seizure.

Audibility/Visibility – (i) CDs of Defendant's Statements – The Court finds that the CDs of the defendant's statements are both audible and visible.

(ii) Video of Beacon Check Cashing (contains no audio)–
The Court finds that this recording is visible.

(iii) Restaurant Security Video (contains no audio)–The
Court finds that this recording is visible.

(iv) Stewart Security Video (contains no audio)–The Court
finds that this recording is visible.

(v) 911 Call–The Court finds that this recording is audible.

Accordingly, the defendant's motion to suppress is in all respects denied.

The foregoing shall constitute both the decision and order of this Court.

Dated: April 24, 2015


Donald A. Williams
County Judge

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ULSTER COUNTY CLERK