People v Lopez
2016 NY Slip Op 32949(U)
February 24, 2016
Supreme Court, New York County
Docket Number: 5015/13
Judge: Thomas A. Farber

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 52

THE PEOPLE OF THE STATE OF NEW YORK,	:	Ind. No. 5015/13
- against -	:	DECISION
MANUELA LOPEZ, Defendant.	:	

THOMAS FARBER, J.:

Defendant Manuela Lopez is charged with two counts of Murder in the Second Degree (depraved indifference and felony murder), Arson in the First Degree, and related charges. The People allege that defendant intentionally set a fire in her apartment, which resulted in the death of one of the occupants and damaged the building.

Defendant moves to suppress several statements made on the scene to police officers; several oral and two written statements made to Detectives Adorno, Worthington and Fire Marshall Ramos; and a videotape statement made to an Assistant District Attorney. A *Huntley* hearing was held on January 6, 7 and 8, 2016. I heard from five witnesses, State Trooper (formerly Police Officer) John Dooley; Detectives John Worthington and Israel Adorno; Police Officer Carlos Alves; and Fire Marshall Andre Ramos. The latter two witnesses were called by the defense. The testimony of the witnesses was consistent in all material respects. Where there are inconsistencies, my additional credibility findings are noted below.

FINDINGS OF FACT

On November 8, 2013, shortly after 1 a.m., numerous police officers and firefighters responded to a report of a fire at 1760 Lexington Avenue, part of the Clinton Houses, located between 109th Street and 110th Street in uptown Manhattan.

Officer John Dooley and Officer Carlos Alves were two of the officers who arrived. There were other officers and firefighters on the scene, including anti-crime police officers in plain clothes. The officers observed two women, Mariana Baez and the defendant, in the lobby. They were yelling at each other in English and Spanish, and were fighting.

When Officer Dooley arrived, he could not hear what the women were yelling at each other. The defendant was crying and screaming. He grabbed the defendant and separated her from Ms. Baez, placing her against an adjacent wall to calm her down. He heard the defendant saying: "I'm sorry, I didn't mean it." Once separated, defendant repeated words to the effect of "I didn't mean it. I started it by accident. I'm sorry."[1] Defendant made a similar statement to Officer Alves, who also asked her what happened prior to being handcuffed.

Once he had the defendant separated from Ms. Baez, Officer Dooley asked the defendant why she was fighting and what happened upstairs. The defendant repeated the same statements, saying that she was sorry and that it was an accident. Officer Dooley handcuffed the defendant at the direction of a sergeant who had been speaking to Ms. Baez.[2]

Once handcuffed, defendant was transported by Officer Alves and his partner, Officer Hu, to PSA 5. The time was 1:58 a.m. Officer Alves does not recall if

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[1] It is not clear from the testimony whether Officer Dooley heard the defendant making these statements before he separated defendant and Ms. Baez or only once he put her against the wall. It is clear that he heard the statements before any questions were asked.

[2] Police Officer Alves remembers that he handcuffed the defendant. To the extent that this testimony is inconsistent, I credit Officer Dooley's testimony that he, at least initially, handcuffed defendant.

he spoke with defendant during the ride to the precinct. At the desk, he spoke to the defendant, but does not recall what was said.

Defendant had injuries to her eye and hand and was transported to the hospital by Officer Hu. Officer Alves picked the defendant up and transported her back to the 23rd Precinct so she could be questioned. Officer Alves did not remember if there was any conversation during the ride. At the precinct, he put her in a room where she was to be questioned by detectives.

At approximately 8:30 a.m., Detective Israel Adorno, of the 23rd Precinct, arrived at work, and learned that there had been a fire at 1760 Lexington Avenue. He was assigned to investigate. Detective Adorno went to the scene and returned to the precinct. At approximately 10:00 a.m., he entered the room where defendant was and began to interview her. Defendant had been sleeping when he arrived. Detective Adorno is fluent in Spanish. Detective Worthington, who was also there, speaks only a few words of Spanish.

Prior to the interview, Detective Adorno had been briefed on the circumstances of the fire by his commanding officer and a lieutenant from the Arson and Explosions squad. He learned that there had been a fire in the apartment, that one of the occupants was in serious condition, and that defendant was in custody. He knew that Mariana Baez had made allegations that Ms. Lopez had started the fire, but he had not yet interviewed Ms. Baez. He learned that no one from the 23rd Squad had interviewed defendant.

Detective Adorno also learned that defendant had injuries to her face and that she had been treated at the hospital.

Prior to reading defendant her *Miranda* warnings, Detective Adorno told the defendant that he had been assigned to investigate the matter; that he had been to the scene; that various persons had told him what happened; and he wanted to hear her side of the story. He did not ask her any questions prior to *Miranda* warnings being administered.

Detective Adorno read the defendant her *Miranda* warnings in Spanish. The warnings were the standard *Miranda* warnings.[3] Defendant acknowledged that she understood the warnings and agreed to answer questions. The initial interview was not recorded and the police officers were not taking contemporaneous notes.[4] The conversation was in a normal voice. The defendant was soft spoken and was "a little timid," but was answering questions. Detective Worthington asked some questions in English, which defendant would answer either in English or Spanish.

Defendant described the apartment and its occupants to the detectives. She said she lived with her longtime girlfriend from Puerto Rico, Mariana Baez, and also with a man named Carlos, a girl named Jessica—who also had a baby—and a man named Shaky. She paid $300 to Shaky to rent the room. Defendant told the detectives that she, Mariana and Jessica worked as dancers at a strip bar in the Bronx.

Defendant told the detectives that she was hanging out in the apartment with Mariana, Shaky, Carlos, and Jessica, and they were smoking marijuana. She was

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[3] At the hearing, Detective Adorno read the warnings that he gave in Spanish and the warnings were translated into English by the Official Spanish Interpreter as they were read.

[4] Detective Worthington apparently made some notes about addresses and phone numbers but does not think he took any notes "in particular, to the interviews." He did make a detailed DD-5, later, from memory.

waiting to go to work that evening in the Bronx and fell asleep. She said that she woke up at about 12 o'clock and noticed that her phone was missing and that the button of her pants was undone. Defendant went to the living room and asked Mariana if she had seen her phone. Mariana said no, so they placed several calls to the phone. She then went to Shaky's room and knocked on the door and asked him if he had seen her phone. She said she "took it as a loss" and then got a cigarette and took it to her room to smoke it. She put the cigarette down—either on her bed or on the window sill—and went to the bathroom to wash up for about five to seven minutes. When she came back, the mattress was on fire. She went to alert everyone that there was a fire.

This initial conversation took about an hour. The detectives left the room. When they left, Fire Marshall Andre Ramos was there. The detectives conferred with Fire Marshall Ramos and also learned that Mariana Baez had said some things that were inconsistent with what defendant had told them.[5] Fire Marshall Ramos told them that he had ruled out natural and accidental causes of the fire–such as a cooking or an electrical fire, and that the fire started in the defendant's bedroom.[6] Based on this discussion, the detectives decided to re-interview the defendant, this time with Fire Marshall Ramos.

Fire Marshall Ramos told defendant that there was no way that a cigarette could start a fire on a mattress in five to seven minutes. Defendant then changed her

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[5]Fire Marshall Ramos had not yet spoken to Mariana Baez, but he had read a statement that she had given to another fire marshall.

[6]The investigation at the scene itself did not allow Fire Marshall Ramos to say whether the fire was started intentionally. I took his testimony with regard to "accidental causes" to mean (as he stated) causes like cooking fires or electrical fires.

story, saying that maybe she placed the cigarette on top of a sponge that had nail polish remover on it. [7].

The detectives confronted defendant with inconsistencies between what she had told them and what they had learned from Mariana Baez. Specifically, they told her that Mariana Baez had told them that the defendant had not gone to sleep in her bedroom, but rather on a sofa in the living room. The defendant said yes, she now recollected that this was true. The detectives told her that Mariana Baez had told them that defendant had woken up frantic that she couldn't find her phone and that she had damaged the sofa, ripping it apart looking for her phone. They told her that Mariana had told them that the defendant had stabbed the sofa with a knife; had broken a coffee table, threatened to set the place on fire and that as she was leaving she said: "look behind me, this place is on fire," leaving the apartment with her suitcase. Defendant denied that she had left with a suitcase and said she did not recall breaking a table. She said she left with work clothes and a purse.

The detectives confronted the defendant with Mariana's statement that defendant had said that she was going to set the place on fire. Defendant stated that all she said was that she told people there was a fire and to get out.

Following this interview, Detective Adorno asked the defendant to write out a statement, which she did, in Spanish, on looseleaf paper. Defendant signed the statement. The statement, which was admitted into evidence as People's 2 and translated by the interpreter said, in essence, said that she finished her cigarette

[7]According to Fire Marshall Ramos, defendant first stated that she left the cigarette on a ledge, then that she put the butt on the bed, and then that she must have left it on a sponge that she had used to clean her nails with nail polish remover.

and left it on top of the bed where the sheets, a sponge, a pillow and some panties were and went to take a bath. When she came out of the bath she saw that there was a fire on her bed and she went to tell the other occupants there was a fire. The statement was written at 2:15 pm.

Although the interview was conducted in a calm voice, the defendant was confronted numerous times with what the detectives perceived to be untruths in her statement. She was told by Fire Marshall Ramos that the fire could not have started in the way she described in that period of time. Detective Worthington, throughout the interviews, told the defendant that they knew that she was lying about how the fire started. He advised her that the scientific and other evidence would prove that she was probably lying and trying to deceive the courts and the process. He mentioned how she would be perceived by the courts and media if she continued to lie about how the fire started. He told her that if she was intending to hurt someone, then maybe she shouldn't be speaking to them, but if she wasn't, she

should tell them.[8] Defendant continued to maintain that she had set the fire accidentally. Defendant was crying, on and off, throughout the interview.

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[8]In Detective Worthington's words, in response to questions on cross-examination:

> That the statements were going to make her look like a liar, and look like she intentionally started this. That the evidence is going to prove that this fire was intentionally started, and that she is trying to hide the truth on whether she either intentionally started it, or intentionally started it and wanted to injure people in that apartment, or in the entire building. [Transcript, p. 285.]
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> ***
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> That it is appearing that she's trying to deceive us, and that, again, evidence is going to prove that. Scientific, crime scene reconstruction, witness statements that we've already received are going to prove that it appears that she intentionally tried to start this fire.
>
> We simply wanted to ask her what her intent was; to cause damage, or to cause injury to the roommates and the rest of the residents in the building.
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> By telling us that she was starting this fire, accidentally, she's not relating–not relating what is probably going to be proved to be untrue, that it's going to seem like she was trying to hurt people, and that she's trying to deceive people and get away with it. [Transcript, p. 286.]
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> Again, I had stated earlier, I was referring to the perception of what people were going to think about her, as far as the media, as far as being in court, that they are going to believe that she intentionally started this fire, and that she is trying to deceive people by saying that she didn't intend to start it, and that people are going to think that she intentionally started the fire and intentionally wanted to hurt and/or kill people. [Transcript, p. 296.] [The defendant was aware that media was present, in part because of the earlier report that a baby was hanging out of the window and in part because she had been photographed by the media.]

Detective Adorno then went back to the scene, because he had not had a chance to go inside the apartment at issue. While Detective Adorno was out, defendant knocked on the door and requested either some water or a napkin. Detective Worthington told her that one of the people that she roomed with, Shaky, was in a very serious condition.[9] He asked her if she wanted to persist in her original statement that this was an accident. Defendant said that she didn't mean for this to happen, that she just wanted to scare them. Detective Worthington then asked her "bluntly," "did you start this fire intentionally?" She said, "yes."

Detective Worthington then got Fire Marshall Ramos, who spoke Spanish, to come in to clarify what it was defendant wanted to say. When Fire Marshall Ramos entered, defendant asked him how Shaky was doing. Fire Marshall Ramos told her that "he doesn't look good." Defendant then got teary eyed and "broke down" and said that she had started the fire, but didn't mean to hurt anyone.

Defendant told them that she had a problem with her roommates because of the property being stolen, so she wanted to scare them. She set fire to a sponge that she had. The sponge had been soaked in acetone about a week before. She described the sponge as seven and a half inches in length and about two inches in depth and was beige. She said she wanted to set fire to the sponge to create smoke to scare her roommates, but the fire got out of hand so she grabbed a bag and left the apartment. She denied making any sarcastic statements to Mariana about starting the fire and she insisted that she tried to warn others that there was a fire.

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[9]Detective Worthington communicated by using the Spanish words that he knew, like ("malo,""enferma" and "fuego") and touching parts of his body to indicate where the burns were as well as some English.

She also told them that when she went downstairs she told Mariana that she did not start the fire intentionally and they began to fight.

At about four o'clock, defendant was given the opportunity to make a second written statement. This statement is in evidence as People's 3. Defendant at first did not want to sign the statement. She was told that it was in her handwriting, that it seemed to contain some semblance of the truth and that she should sign it. She eventually signed her first name. The statement, which was written in Spanish and translated by the official interpreter reads:

> It happened with a cigarette and a sponge. The cigarette, I placed on top of the sponge. My intention was not to do any harm. I am not a monster. I only wanted to scare them. I appreciate those people, and my intentions were not to hurt anyone, and I want to ask for forgiveness to all, everyone, and to not have any bad feelings. I didn't think that the bed was going to burn that way. I thought that only the sponge was going to burn. I'm very sorry, and this is not going to happen again. I only wanted to burn the sponge.

Defendant then agreed to make a statement on video to Assistant District Attorney Linda Ford and made a statement. At first, defendant told the detectives that she was going to tell the assistant district attorney what she had said in the first statement, not the second statement. The detectives told her to tell the truth.[10] The video statement, which is evidence as People's Exhibit 4, was preceded by *Miranda* warnings and, in essence repeats the substance of the second oral statement. Detectives Worthington and Adorno were present during the statement.

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[10]Detective Worthington testified: "I advised her that . . . you lied to us for the better part of the day, and you shouldn't lie to the District Attorney."

CONCLUSIONS OF LAW

At a *Huntley* hearing, the People have the burden of proving beyond a reasonable doubt that statements they seek to introduce at trial were made voluntarily. *People v. Witherspoon*, 66 NY2d 973 [1985]; *People v. Rosa*, 65 NY2d 380, 386 [1985]; *People v. Anderson*, 42 NY2d 35, 38 [1977]; *People v. Huntley*, 15 NY2d 72, 78 [1965]. If an individual is in police custody, *Miranda* warnings are required before that individual is subject to interrogation. *Miranda v. Arizona*, 384 US 436 [1966]; *People v. Ferro*, 63 NY2d 316 [1984]; *People v. Huffman*, 41 NY2d 29 [1976].

Initially, I note that the interviews were not recorded or videotaped and that contemporaneous notes were not taken. While there is no requirement that notes be taken, and I am not giving myself a formal "adverse inference" charge, I have considered the absence of notes in rendering my decision. There is no substantial dispute, however, as to what was said in the course of the interrogation, and to the extent that Detective Worthington's testimony reflects a more aggressive interrogation than Detective Adorno's testimony, I have made findings consistent with Detective Worthington's testimony.

With respect to the failure to videotape the interview, while I believe that videotaping is ultimately going to be the accepted method of recording interrogations, at the time of this interview this was not standard practice. On the specific facts of this case, I do not find that the absence of a video should be held against the People.

The statements made at the scene, including the statements that were made in response to Officer Dooley's questions, were not the product of custodial interrogation. The initial statements were made to Mariana Baez and were spontaneous. These were not made to the police at all. The questions asked by Officer Dooley were neither custodial, nor interrogation, since they were asked by the police for the purpose of clarifying the situation. *See People v. Vaughn*, 273 AD2d 99 (1st Dept 2000), *lv denied* 95 NY2d 939; *People v. Velasquez*, 267 AD2d 64 (1st Dept 1999), *lv denied* 94 NY2d 886; *People v. Weston*, 234 AD2d 90 (1st Dept 1996), *appeal denied* 89 NY2d 989. Defendant does not seriously contest this.

Defendant argues, initially, that all of the subsequent statements are involuntary, under *People v. Dunbar*, 24 NY3d 304 (2014), in that the words that Detective Adorno used prior to administering *Miranda* warnings, effectively vitiated the warnings. I reject this argument. In *Dunbar*, the assistant district attorney and a detective investigator interviewed the defendant. Immediately prior to *Miranda*, the ADA and the detective investigator spoke to the defendant, delivering a pre-scripted preamble. They informed him, among other things, of the charges the defendant would be facing, including the date, time and place of the crimes. The defendant was then informed that in a few minutes he was going to be read his *Miranda* warnings and he would be given an opportunity to explain what happened. He was told:

> "If you have an alibi, give me as much information as you can, including the names of any people you were with.
> "If you version of what happened is different from what we've been told, this is your opportunity to tell us your story.
> "If there is something you need us to investigate about this case you have to tell us now so we can look into it.
> "Even if you have already spoken to someone else you do not have to talk to us.

> "This will be your only opportunity to speak with us before you go to court on these charges."

After a couple of more comments, *Miranda* was read.

The problem with the "preamble" in *Dunbar* and the companion case, *Lloyd Douglas*, was that the preamble communicated to defendant that she could exercise her rights, but that the exercise would come "at a price." *Id.* at 316. Specifically:

> they would be giving up the valuable opportunity to speak with the assistant district attorney, to have their cases investigated or to assert alibi defenses. The statements "to give me as much information as you can," that "this is your opportunity to tell us your story" and that you "have to tell us now" directly contradicted the later warning that they had the right to remain silent.

Id.

Here, Detective Adorno introduced himself, told the defendant that he had been to the scene and spoken to people and wanted to hear "her side of the story," but made none of the objectionable statements that were present in *Dunbar.* He did not imply that this was the only time for her to tell her story, or that she had to speak "now" or say anything about alibi defenses. No case that I know of has held that a detective simply telling a defendant that he wants to hear "her side of the story" vitiates subsequent *Miranda* warnings.

Defendant also challenges the statements on the grounds that they were involuntary.[11] Defendant cites *People v. Thomas,* 22 NY3d 629 (2014), for the proposition that the right to remain silent doesn't end once *Miranda* warnings are given. The defendant takes the position that if someone denies guilt and makes a

[11]Although defendant's arguments were made with respect to all of the statements, they really apply only to the statements made after the first written statement. There can be no serious argument that defendant's initial statements were involuntary.

false exculpatory statement, and the police put pressure on her to change the story, that is an unconstitutional encroachment on the right to remain silent.

Defendant makes, I think, two related arguments. First, defendant argues that I should apply the *Dunbar* analysis to post-*Miranda* interrogation, in effect finding that the police interrogation vitiated the prior *Miranda* warnings by putting pressure on her to speak. Defendant focuses on Worthington's statement: if, in fact you did mean to hurt someone intentionally, maybe you shouldn't talk to us. Defendant characterizes this as saying, "if you continue to assert your silence, you are putting yourself at great risk." Second, defendant argues that the pressure put on defendant, specifically the statements by Detective Worthington as to how the defendant would be perceived by the courts and media, was similar to the type of pressure that the court found inappropriate in *Thomas.*

Defendant's initial argument, that the police are required to accept a statement that they believe, based on the available evidence, is false, has no support in the case law. The police are not required to accept a false exculpatory statement, and continued interrogation, even vigorous interrogation, does not vitiate prior *Miranda* warnings. Indeed, almost all of the case law following *Miranda* involves just that: defendant making a statement (e.g., I didn't do it, I wasn't there, it was an accident) and the police or prosecutor challenging it. If that is a *per se* violation of the defendant's right to remain silent, no court has yet so held.

I also do not find the questioning rendered the statements involuntary.

Initially, defendant, although questioned aggressively, was treated well by the police. Although it is unclear how much she slept, she was sleeping when the

police began their interview in the morning, and she does not appear to be tired on the videotape taken later that afternoon. She was fed and given water. No physical coercion is claimed, and the detectives spoke to her in measured tones. While the various statements were taken over the course of seven hours, the initial statement took under an hour and was followed by a break of approximately an hour. By 2:15 p.m., the defendant made her first written statement, approximately four hours after the interrogations started, but the interviews lasted at most a few hours.

Nor do I find that the interrogation techniques used by the detectives were so "inherently coercive" that they deprived defendant of *due process*–at least as the law currently stands. In *Thomas*, the defendant was charged with Murder in the Second Degree on the theory that he caused the death of his child by "slamming" him down on a mattress from 17 inches above his head. The child was found unresponsive by his mother, and the initial diagnosis was sepsis. When the treating physician found signs of blunt force trauma, defendant was arrested while his wife was at the hospital with the child.

Defendant was interrogated for 9 ½ hours in two sessions. The first lasted two hours, but was interrupted when defendant was involuntarily committed for 15 hours in a secure psychiatric unit, having expressed suicidal thoughts.

Over the course of the interrogation, the police repeatedly told defendant that they were not investigating a crime and that once he told them what happened "he could go home." *People v. Thomas*, *supra*, 22 NY3d at 638. When defendant denied that he had hurt the child, the police threatened to arrest the defendant's wife–and remove her from his "dying" child's bedside–if he did not take

responsibility. And the officers repeatedly lied to defendant, telling him that the child–who had already been pronounced dead–was alive and that they could only save the child's life if he confessed and told him how he had caused the child's injuries. Four hours into the second interrogation, defendant told the police that he had accidentally dropped the child from a distance of five to six inches. When the officers angrily told defendant that the injuries could not have occurred this way, one of the officers "proposed" to defendant that defendant had held the child over his head and slammed him down on the mattress. Defendant ultimately confessed to committing the crime in this fashion. *Id. at* 640.

The Court of Appeals noted that not all deception was prohibited, and that generally, a determination of whether a statement is involuntary will "depend upon the facts of each case, both as they bear upon the means employed and the vulnerability of the declarant." *Id. at* 642. The Court held, however, that in particularly egregious cases, such as this one, voluntariness could be determined as a matter of law. *Id.* The Court noted a "set of highly coercive deceptions" that were "sufficiently potent to nullify individual judgment in any ordinarily resolute person and were manifestly lethal to self-determination when deployed against defendant. . . ."

The Court first noted the officers' threats to arrest the defendant's wife and remove her from the child's bedside unless defendant confessed. The Court held that this threat was "[im]permissibly marshaled to pressure defendant to speak against his penal interest." *Id. at* 643. The Court then noted the "patently coercive representation," repeated 21 times, that the defendant's exact description of what

he did was necessary to save the child's life, when in fact the child was already dead. Noting that a different result might be reached if the representations were in fact true, since they were false, the statements "were coercive by making defendant's constitutionally protected option to remain silent seem valueless. . . ." *Id.*

Finally, the Court noted the "ubiquitous assurances" (repeated over 67 times) that the police were investigating an accident, rather than a crime, and that defendant would not be arrested and would be permitted to go home.

The Court found that under the totality of circumstances, the interrogation "completely undermined, defendant's right not to incriminate himself–to remain silent." *Id. at 642.*

The interrogation in the instant case was nowhere near as egregious as that in *Thomas*, and was almost entirely–if not entirely–devoid of untruths. The interrogation in *Thomas* spanned a period of over 24 hours, including 9 ½ hours of interrogation interrupted by defendant's treatment for 15 hours in a psychiatric hospital. Here, defendant gave the essence of her final statement to Detective Worthington and Fire Marshall Ramos some time between 2:15 pm and 4:00 pm (when she wrote the second written statement). The interrogation had commenced at 10 am and was interrupted by several lengthy breaks. Defendant was thus interrogated for no more than a few hours over a period of approximately four and a-half to six hours.

While the police clearly indicated to defendant that they thought she was lying, they never told her that they were not investigating a crime or suggested that defendant could "go home" if she just told them what happened. In *Thomas*,

defendant was essentially told that if he did not confess, his child would die. And he was told that if he did not confess his wife would be arrested and removed from his child's bedside. They thus put defendant in the untenable position of either giving up his constitutional right or being responsible for the death of his child.

As the Court of Appeals noted in *Thomas,* a certain amount of deception is permissible. *See People v. Tarsia*, 50 NY2d 1, 11 (1980); *People v. Grigoroff*, 131 AD3d 541 (2d Dept 2015); *People v. Gelin*, 128 AD3d 717 (2d Dept 2015), *lv denied* 26 NY3d 929. In fact, the police here, in contrast to *Thomas*, said nothing that was not true. The defendant gave an initial statement that was inherently incredible, was contradicted by the available scientific evidence and by the eyewitness account of the defendant's best friend–who had no apparent motive to lie. The police were certainly within their rights to confront defendant with the inconsistencies.

Detective Worthington's statements that if defendant continued to lie about how the fire started, the courts and media would believe that she was lying about whether she intended to hurt anyone, constituted hard nosed interrogation. But again, unlike in *Thomas*, the statements were not untrue,[12] and, in the context of this case did not render the statement involuntary. The detectives did not raise their voices or get angry with defendant.

Moreover, when defendant finally broke down and changed her story, it was not in response to badgering, or even in response to the statements that defendant

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[12]Indeed, what the detectives said is almost certainly true. For defendant to have denied that the fire was set intentionally would require a jury to discredit completely Mariana Baez's testimony and find that the fire was set accidentally in a way that the experts said could not have occurred. What the detectives said is in essence what the *"falsus in uno"* charge tells the jury in our pattern jury instructions.

now alleges were so coercive. It was instead in response to her being told that Shaky was in very bad condition. And this was true.

Accordingly, I find that the People have met their burden of proving that the statements were voluntary beyond a reasonable doubt.

Dated: New York, New York
February 24, 2016

Hon. T. Farber

Thomas Farber
Acting Justice Supreme Court

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