

People v Hardy

2016 NY Slip Op 33014(U)

August 18, 2016

Supreme Court, Erie County

Docket Number: 01315-2015

Judge: Deborah A. Haendiges

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

The People of the State of New York

vs

INDICTMENT NO.
01315-2015

BRANDEN HARDY,

Defendant.

Michael J. Flaherty, Jr., Esq.
Acting Erie County District Attorney
BY: Danielle E. Smith, Esq.
Assistant District Attorney
Attorney for the People

Attorney for the Defendant
Robert Ross Fogg, Esq.

DECISION AND ORDER

DEBORAH A. HAENDIGES, J.S.C.

An indictment has been filed against the Defendant accusing him of Burglary in the First Degree, in violation of Penal Law § 140.30 (3), Criminal Possession of Weapon in the Third Degree, in violation of Penal Law § 265.02 (1) and Criminal Contempt in the Second Degree, in violation of Penal Law § 215.50 (3).

Although Defense did not request a suppression hearing in this matter, one was held at the request of the People and by consent of Defendant to address the voluntary nature of any alleged statements made by the Defendant as described in the CPL § 710.30 notice provided to the Defendant upon Defendant's arraignment.

Furthermore, it was clarified on the record by both the People and Defense Counsel that

the People are not seeking to introduce, in their case-in-chief, the second statement made by the Defendant after his arrest on August 2, 2015, to wit: "I didn't do anything". The scope of this hearing that was held on March 31, 2016 was to solely address the first statement made by the Defendant and provided on the CPL § 710.30 notice.

A confession or admission is admissible at trial in this state only if it is voluntary and the voluntariness has been established by the People beyond a reasonable doubt. A pretrial suppression hearing was conducted before me on March 31, 2016. I give full credence to the testimony of the People's witness Lackawanna Police Officer Robert Cintron.

Finding of Fact

On August 2, 2015 at approximately 5:16 am, a call went out to law enforcement causing City of Lackawanna Police Officer Robert Cintron to respond to 27 Victory Avenue in the City of Lackawanna, County of Erie and State of New York. Officer Cintron responded in a marked patrol vehicle. Also responding to the call was City of Lackawanna Police Officer Matt Behr. The call involved allegations that there was a man inside the residence with a knife and that there was a possible violation of a stay away Order of Protection.

Officer Cintron entered the door to the lower apartment and walked upstairs through a second unlocked door to the second story apartment. Officer Matt Behr was behind him as he entered the apartment and Officer Cintron did have his gun drawn. Upon entering the apartment Officer Cintron announced his arrival and he could hear two women shouting "get out, leave".

As the Officers reached the top of the stairs and rounded the corner Officer Cintron shouted "drop the knife and put your hands up". Officer Cintron saw the Defendant immediately put his hands up and then the Defendant spontaneously stated "I already dropped the knife. It's on the table". Officer Cintron asked the Defendant "Where is it?" In response, the Defendant gestured to the table ten feet away to the left of the Defendant. Officer Cintron testified that the Defendant's statement was instantaneous, and spontaneously made after he gave the command to drop the knife. The Defendant was not under arrest, nor was he handcuffed at the time that he made the statement.

Conclusions of Law

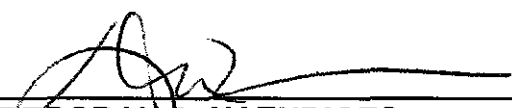
There is no question that the statement made by the Defendant on August 2, 2015 while at 27 Victory Avenue, was immediate upon the entrance of law enforcement into the apartment, prior to Defendant being placed in custody and before being advised of his rights pursuant to *Miranda v Arizona 384 US 436 (1966)*. The initial statement made by the Defendant after being commanded to put the knife down as the police entered the apartment to what appeared to be a very dangerous situation was immediately and spontaneously made by the Defendant when he stated "I already dropped the knife. It's on the table." Further, said statement made by the Defendant was not a product of a custodial interrogation or police questioning in any manner, nor was there any evidence presented at the hearing that would establish that the Defendant was threatened or coerced into making the statement. It was instantaneous and

spontaneous and not in response to any questions posed to him by law enforcement or anyone else.

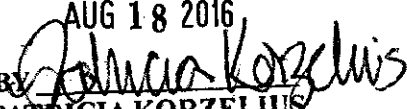
Based upon the foregoing, this Court finds that the statement made by the Defendant to law enforcement upon their entry into 27 Victory Avenue, to secure the residence and safety of those inside, shall be admissible in the People's case-in-chief as it was voluntarily made by the Defendant, if the People choose to introduce said statement. Again, it should be further noted that the second statement contained on the CPL § 710.30 notice that was allegedly made following the Defendant's arrest, is not being sought by the People to be introduced in their case-in-chief.

This constitutes the Opinion, Decision and Order of the Court.

DATED: 8/18/16


DEBORAH A. HAENDIGES,
Justice of the Supreme Court

GRANTED

AUG 18 2016

PATRICIA KORZELIUS
COURT CLERK