

People v Martinez

2016 NY Slip Op 33246(U)

February 16, 2016

Supreme Court, Westchester County

Docket Number: Ind. No. 15-00696-02

Judge: Robert A. Neary

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**FILED
AND
ENTERED**
ON 2-16 - 2016
**WESTCHESTER
COUNTY CLERK**

AR
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

- against -

MIGUEL MARTINEZ,

Defendant.

-----X
NEARY, J.

DECISION AND ORDER

Ind. No. 15-00696-02

The following constitutes the opinion, decision and order of the Court:

The defendant has been indicted for the crimes of Robbery in the First Degree, Robbery in the Second Degree, Grand Larceny in the Fourth Degree, Menacing in the Second Degree and Criminal Possession of a Weapon in the Third Degree. It is alleged that on or about May 18, 2015, the defendant did forcibly steal money from an individual and displayed a knife in the process.

The defendant claiming to be aggrieved by the improper or unlawful acquisition of evidence has moved to suppress a videotaped statement allegedly made by him on May 18,

2015 at Peekskill Police Headquarters on the ground that the statement was involuntary and made without benefit of the Miranda warnings.

The defendant further seeks suppression of certain items of physical evidence, namely a knife, contending it was seized pursuant to an unlawful arrest that lacked probable cause.

The People must establish the voluntariness of the statements attributed to the defendant beyond a reasonable doubt before it is admissible at trial.

Before any physical evidence seized incident to arrest may be suppressed, the defendant must establish the illegality of his arrest by a preponderance of the evidence. The People must preliminarily demonstrate that the arrest of the defendant was based upon reasonable and probable cause.

By decisions of this Court dated October 13, 2015, pre-trial *Huntley, Dunaway, Mapp* and *Sandoval/Ventimiglia* hearings were ordered to be held prior to trial. On February 10 and February 11, 2016, a combined hearing was held to address the *Huntley, Dunaway and Mapp* issues. The *Sandoval/Ventimiglia* hearing was adjourned until February 18, 2016.

At the hearing, the prosecution called as witnesses the following Peekskill Police Department officers: Detective Carl DeMarco, Sergeant John Falcone, Sergeant Don Halmy and Detective John Bennett. The Court finds the testimony of the People's witnesses to be candid, plausible and fully credible. The defense presented no witnesses and offered no evidence. The

People's exhibits in evidence included two (2) videotaped statements and two (2) *Miranda* forms. This Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

At approximately 3:00 A.M. on Friday, May 18, 2015, Manuel Quirindumbay walked into the Peekskill Police Department Headquarters and announced in broken English that he had just been robbed. With the use of a bilingual 911 operator, Desk Sergeant John Falcone was able to determine that when being robbed by a Hispanic male and white female, the victim had been threatened with a knife.

Mr. Quirindumbay also partially described the clothing of both assailants and this description was related to Patrol Sergeant Don Halmy who had been summoned to headquarters from his street duties to assist in the investigation. Sgt. Halmy recalled seeing the defendant and his co-defendant, Dawn Negrón, cross in front of his vehicle while he was on routine traffic patrol two blocks from the crime scene mere minutes before the robbery was reported. Sgt. Halmy knew the defendant from prior police contacts and realized he and his female companion matched the descriptions given by the robbery victim.

Assisted by a local cabbie, Sgt. Halmy tracked the defendant and Dawn Negrón to a local bar where Ms. Negrón was found hiding behind a garbage can in an adjoining shed. She was taken to police headquarters where she promptly admitted her role in the robbery and implicated in detail the defendant as her accomplice.

At about 1:30 P.M. on May 18, 2015, Peekskill Detective Carl DeMarco, aware of Ms. Negrón's confession, observed the defendant standing in the doorway of a local laundry. He appeared to be nervously looking up and down the block. Det. DeMarco approached the defendant whom he knew from previous encounters and told the defendant he needed him to come to police headquarters to discuss something and took the defendant into custody. Before being placed in the patrol car, based upon officer safety considerations and incident to arrest, the defendant was subjected to a routine cursory pat down search and a knife was found in one of his pockets.

Shortly after arrival at police headquarters, the defendant was interviewed by lead Detective John Bennett. The session was recorded on videotape and lasted approximately one (1) hour. During the interview, the defendant was not restrained in any way and the tone remained conversational throughout. The rendition of the *Miranda* warnings and the defendant's waiver thereof was recorded and further memorialized by the written waiver form in evidence, initialed and signed by the defendant. In the course of this interview, the defendant incriminated himself in the above robbery.

CONCLUSIONS OF LAW

Dunaway Issue

Probable cause is a synthesis of all information known to a police officer, including what he or she has seen, heard and learned as an experienced officer. [See *People v. Belo*, 240 AD2d 964].

Here, police had probable cause to arrest the defendant based upon the description given by the victim; his proximity both temporally and physically to the crime scene; and his having been implicated by his accomplice.

At 3:00 A.M. in Peekskill, pedestrian traffic is sparse, so it is significant that an experienced officer who knew the defendant took notice of the presence of both the defendant and Ms. Negron near the crime scene at about the time of its occurrence. The fact that this couple matched the general description of the alleged perpetrators only serves to enhance the belief they were involved and corroborated Ms. Negron's confession implicating the defendant. Case law is clear that an accomplice's detailed account of a defendant's alleged participation in a crime is sufficient alone to provide probable cause for an arrest. [See *People v. White*, 109 AD2d 859; *People v. Scherifi*, 147 AD2d 663].

Ms. Negron's videotaped confession was received in evidence at this hearing and in it she plainly and unequivocally identifies the defendant as the principal actor in the robbery that morning while at the same time acknowledging her role as the individual who rifled through the victim's pockets and removed the cash. There has been no evidence adduced at this hearing to question the authenticity of her confession.

In sum, the Court finds the arrest of the defendant was based upon probable cause.

Mapp Issue

Since the police could lawfully arrest the defendant based upon the statements of accomplice Negron, the knife seized from his person by police when he was taken into custody outside the laundry was legally obtained and, thus, not subject to suppression.

Huntley Issue

A review of the defendant's videotaped statement to Det. Bennett shows that he was adequately advised of this Constitutional Rights against self incrimination and that he waived those rights freely, knowingly and voluntarily. The record is devoid of any suggestion of police impropriety. Throughout the questioning, the defendant is treated respectfully and given ample opportunity to explain his actions. Contrary to defense counsel's position, he does not, on tape, appear to be intoxicated or confused. While in portions of the tape, he appears to be offering to serve as an informant in exchange for leniency, the detective clearly declines any such offer.

Based upon the forgoing analysis, the defendant's motion to suppress his statements to police is denied in its entirety.

People v. Miguel Martinez
Indictment No. 15-00696-02

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
February 16, 2016



ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

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