

**People v Iacovino**

2018 NY Slip Op 32895(U)

October 12, 2018

County Court, Westchester County

Docket Number: 17-0349

Judge: Barbara G. Zambelli

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

ANGELO IACOVINO,

Defendant.

-----X

ZAMBELLI, J.

DECISION AFTER HEARING

Indictment No. 17-0349

**FILED**

OCT 16 2017

TIMOTHY C. IDINI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

The defendant has been indicted for the crimes of vehicular assault in the second degree, operating a motor vehicle while under the influence of drugs (VTL §1192(4)), criminal mischief in the fourth degree (two counts), reckless driving and unauthorized use of a vehicle in the third degree allegedly committed on or about December 4, 2016, in the County of Westchester.

By decision and order dated August 22, 2017, this court granted defendant's motion to suppress evidence solely to the extent of ordering a pretrial Wade hearing, Huntley hearing, consent for the taking of a buccal swab, blood test, and disclosure of medical records after signing a HIPAA release. The hearing was held on October 10, 2017 wherein Police Officer David Bohan and Detective Neal Cromwell of the Yonkers Police Department and Ryan Shank of Empress Ambulance Service gave testimony.

**FINDINGS OF FACT**

The credible testimony adduced at the hearing on this case established that on December 4, 2016, at approximately 2:13 p.m., Police Officer Bohan responded to the scene of a traffic accident with serious injury at 212 Dunwoodie Street, Yonkers. Upon

arrival he observed ESU and fire personnel. A female was laying in a driveway at this residence and a male was laying on the front lawn. An ATV was up against a van. The male was screaming in pain. An eyewitness, Sean Redikan, approached Police Officer Bohan and told him that he saw the male driving the ATV at a high rate of speed down the street whereupon it went upon on the lawn, missed the telephone pole but ran into a four foot high brick retaining wall thus ejecting both parties. Sean Redikan pointed to the male on the lawn, defendant herein, as the driver of the vehicle. Police Officer Bohan did not ask Sean Redikan to identify any person. Sean Redikan approached Police Officer Bohan, explained what he saw and pointed to defendant as the driver.

Empress Ambulance is not under contract with Jacobi Hospital. At approximately 2:20 p.m. Ryan Shank, a paramedic with Empress Ambulance, responded to the scene of the accident. Ryan Shank saw two patients. He assessed and treated the defendant. Ryan Shank tried to figure out what happened. Defendant was screaming in pain about his leg. Defendant was placed in the ambulance accompanied by Ryan Shank. No one else was present. He was asked his name, whereabouts, and who was the President. In response to Ryan Shank's question as to what had happened, defendant told him he was driving a quad with a person in the back, lost control of the quad and hit a wall. Ryan Shank noticed defendant had an altered mental status with slurred and erratic speech. Asked if he had taken any drugs or alcohol, defendant said heroin earlier in the day, having ingested one or two bags 1 - 2 hours before the accident. Defendant was brought to Jacobi Hospital in the Bronx, the closest trauma center to the accident site.

Ryan Shank completed a Patient Care Report (PCR), documenting the care provided to the defendant as part of a continuum record of care which was important for

the hospital personnel for diagnosis and treatment. The original record had evidently been corrupted and therefore a reconstructed record had to be prepared, Exhibit 8. Ryan Shank gave the trauma team doctor an oral report of defendant reportedly having used heroin.

On December 6, 2016 Detective Cromwell went to Jacoby Hospital to speak with defendant. Detective Cromwell had previously visited the scene of the accident on December 4. At approximately 9:52 a.m. on December 6, Detective Cromwell met defendant in the hospital room. Defendant was in bed with a serious leg injury and experiencing a lot of pain. He was responsive to the detective's questions and very agreeable. No one else was present. No police officer had been stationed at the hospital room. Defendant was not in cuffs. Detective Cromwell asked defendant if he would speak to Detective Cromwell and if he would sign a HIPAA form and consent to giving DNA and blood samples. He asked defendant if his pain was affecting his ability to understand or making it difficult for him. Defendant was agreeable and had no problem. With regard to the HIPAA form, he also said sure, no problem. He was read the consent form, Exhibit 1, regarding the blood which was the same form as Exhibit 2 and was re-read the portion of Exhibit 2 pertaining to a buccal swab. He had no problem signing them. The detective needed to get a HIPAA release form. He called into headquarters and had it faxed to him at the nurses' station. Detective Cromwell asked the nurses if defendant was on anything which would affect his ability to understand or impair his ability to consent to signing forms to which the nurse responded in the negative.

Detective Cromwell explained to the defendant that the forms would be used to assist in the investigation of the traffic accident. The HIPAA forms would allow him to get

all the defendant's medical records as part of the investigation. After defendant signed the forms, the detective spoke to him about the accident. Defendant told him he took the ATV from the house where he and his girlfriend Anna lived. He was driving at a high rate of speed when he turned around to look at her and lost control. He crashed. He told him that the detective would see that his blood was dirty, he had smoked weed. He was on parole but his parole officer did not have a problem with him using weed. Defendant started to explain the incident in greater detail but Detective Cromwell stopped him because he wanted to speak to defendant in a more controlled environment with another detective present. Detective Cromwell then went to see Anna. Defendant asked him to come back and tell him how she was doing. Detective Cromwell saw Anna with her father and came back to tell defendant her father was with her.

On February 21, 2017, defendant's parole officer, Roper, contacted Detective Cromwell to let him know that defendant was coming in for a meeting at 1:45 p.m. Roper had agreed to let Detective Cromwell know when the next meeting would be. Detective Cromwell and his partner Det. Viviano went to the New Rochelle Parole Office. Detective Cromwell asked defendant if he wouldn't mind coming to Yonkers to talk about the accident they were investigating. Defendant was still experiencing pain and was on crutches. Defendant said fine but he had a friend at the parole office waiting for him with all the friend's luggage. The detectives told defendant it would be okay for the friend to come with them with his luggage. Defendant and his friend rode to the Yonkers Detective Division in the back of the police vehicle. They were not patted down or searched. While in the car defendant started to talk about the accident but the detective asked him not to talk about it until they read him his rights. Defendant chatted with his friend. At the

Detective Division, defendant's friend stayed in the lobby. Defendant went to the interview room at approximately 2:32 p.m. He was not cuffed. He was given coffee. He was read each of his Miranda rights, acknowledged he understood his rights, and responded yes, that he wanted to talk about the ATV accident. His statement was audio and visually recorded. He also signed a typed statement. At no time did he exercise his right to remain silent. At the very end he asserted his right to counsel at approximately 4:32 p.m. The statement concluded at 4:58 p.m.

### **CONCLUSIONS OF LAW**

The evidence established the identification of the defendant as the driver of the vehicle by Mr. Redican was civilian initiated and not police arranged. (See, People v. Dixon, 85 N.Y.2d 218). Accordingly, the motion to suppress an in court identification is denied.

With regard to defendant's consent to a blood and DNA sample, it is well established that consent, "must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances." (See, People v. Gonzalez, 39 N.Y.2d 122, 124).

The evidence clearly established that defendant freely and voluntarily consented to the samples. He was not in custody. He was not subject to interrogation. There was no pressure or coercion exerted by the detective. Defendant was read the consent form which included his right to refuse and warning him that the evidence could be used against him (Exhibits 1 and 2). Accordingly, his motion to suppress the test results is denied.

Furthermore, the evidence establishes defendant freely and voluntarily signed the

release forms, the HIPAA forms, and therefore his motion to suppress his medical records is denied.

Defendant nevertheless contends that his oral statement embodied in the patient care report where he admits to using heroin prior to the accident is inadmissible inasmuch as it is protected by the physician patient privilege.


This issue however is moot since defendant voluntarily executed the HIPAA release authorizing the disclosure of his medical records to the Westchester County's District Attorney's Office (See, People v. Martinez, 22 A.D.3d 318). However, the exception to disclosure of Drug Abuse under paragraph one of the HIPAA form warrants redaction of his statement in the PCR and preclusion of testimony from medical personnel that he is a 20 year heroin abuser.

With regard to defendant's statements, "It is the People's burden to prove beyond a reasonable doubt that statements of a defendant they intend to rely upon at trial are voluntary" (People v. Thomas, 22 N.Y.3d 629, 641; People v. Guilford, 21 N.Y.3d 205, 208). "To do that, they must show that the statements were not products of coercion, either physical or psychological" (People v. Thomas, 22 N.Y.3d at 641). The video establishes defendant was advised of and waived his Miranda rights (see, Miranda v. Arizona, 384 U.S. 436). His statements prior to the exercise of his right to counsel were voluntarily made beyond a reasonable doubt. The recording demonstrates defendant's demeanor throughout the interview was relaxed, animated and forthcoming.

Accordingly, the motion to suppress his statement prior to the exercise of his right to counsel is denied.

The foregoing constitutes the decision of the court.

Dated: White Plains, New York  
October 12, 2017

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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