

**People v Andrews**

2018 NY Slip Op 33548(U)

April 16, 2018

County Court, Westchester County

Docket Number: 17-0745

Judge: Larry J. Schwartz

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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

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**FILED**



**DECISION & ORDER**

DARREN ANDREWS,

APR 17 2018

Indict. No. 17-0745

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
-----X

SCHWARTZ, J.,

By Westchester County Indictment Number 17-0745, defendant Darren Andrews is charged with two counts of criminal possession of a control substance in the third degree, as a felony (PL §220.16[01]), two counts of criminal possession of a control substance in the fourth degree, as a felony (PL §220.09[01]), and two counts of criminal possession of a control substance in the seventh degree, as a misdemeanor (PL §220.03).

On March 29, 2018, a *Mapp/Dunaway/Huntley* hearing was conducted before this Court at which the People called Yonkers Police Detective Stephen Donohue, Officer Timothy Dolce, and Detective Dennis Robertson. They each identified the defendant in court. Though the Court had ordered a *Wade* hearing being held, prior to the commencement of the hearing the People withdrew their noticed identifications on the record. Thus, that portion of the defendant's motion seeking to suppress said identifications is denied as moot.

Further, prior to the commencement of the hearing, the noticed oral statement alleged to have been made by the defendant on or about May 31, 2017 at 8:00 pm was also withdrawn by the People. Thus, that portion of the defendant's motion seeking to suppress said statement is denied as moot.

Received into evidence at the above hearing were the People's Exhibits 6, 8 and 16.

The defense called no witnesses and offered no evidence at the hearings.

At a *Mapp/Dunaway* hearing, the People have the burden of going forward to show the legality of police conduct which lead to the seizure of evidence and/or the obtaining of statements from the defendant. In seeking to challenge the propriety of the same conduct, the defendant bears the burden to show by a fair preponderance of the credible evidence that the police conduct was illegal (*see Mapp v Ohio*, 367 US 643 [1961]; *Dunaway v New York*, 422 US 1053 [1979]).

At a *Huntley* hearing, the People have the burden of showing whether any statements allegedly made by the defendant, which have been noticed pursuant to CPL 710.30 (1)(a), were voluntarily made by the defendant within the meaning of CPL 60.45 (*see CPL 710.20 (3)*); CPL

710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]) and/or obtained in accord with defendant's Sixth Amendment right to counsel.

I find the testimony offered by the People's witnesses to be plausible, candid, and fully credible. I make the following findings of fact:

### **FINDINGS OF FACT**

On or about June 14, 2016, the City Court, City of Yonkers (Quinones, J.) signed and issued a search warrant order, permitting the search of defendant's residence at 167 Radford Street, Apartment 5D, City of Yonkers, County of Westchester, a 2003 black Audi A4, and defendant's person. Yonkers Police Detective Stephen Donohue and then-Officer Dennis Robertson subsequently established surveillance in the area together with other detectives.

At approximately 7:20 P.M., defendant was observed driving a 2003 black Audi A4 near Radford Street and South Broadway, in the City of Yonkers. Yonkers Police Detectives Casino and Muller stopped defendant's vehicle. Detective Donohue responded to the stop, searched the defendant's person pursuant to the search warrant, and used the defendant's keys to enter the defendant's apartment to execute the warrant within the apartment together with Officer Robertson and Det. Sgt. Castelli.

Two hundred and thirty-eight glassine envelopes of heroin, which were inside a zippered part of the couch in the living room, were recovered from defendant's apartment. Det. Donohue took possession of them. In addition, the detective seized a black replica BB gun and three pieces of mail with defendant's name and address. After completing a search of defendant's apartment, defendant was arrested and transported to the Yonkers Police Department. During a search of defendant's person, the police recovered \$738.00.

On or about June 14, 2016, at approximately 10:16 P.M., at the Yonkers Police Narcotics Unit headquarters, Detective Donohue read defendant his Miranda rights and he waived them after signing the Miranda card from which the detective read. During his post-Miranda interview with Det. Donohue and Officer Robertson, defendant stated, in sum and substance, that the heroin was his and his wife didn't know anything about it. In addition, defendant stated, in sum and substance, that he had a heroin habit and that he sells heroin to support it (together the "Noticed Statements"). The defendant was subsequently released.

On or about May 31, 2017, the City Court, City of Yonkers (Daly, J.) signed and issued a second search warrant order, again permitting the search of defendant's residence at 167 Radford Street, Apartment 5D, City of Yonkers, County of Westchester and defendant's person.

Later that day, Detective Donohue established surveillance in the area with the since-promoted Detective Dennis Robertson. At approximately 6:20 P.M., Det. Donohue observed the defendant leave the building at 167 Radford Street with another male. The two men walked westbound on Radford St and made a right on Riverdale Avenue where they

met up with a third male. As Det. Donohue and Robertson approached the males in their unmarked police vehicle, both detectives observed the defendant attempt to hand a glassine envelope of heroin to the third male. During the exchange the glassine envelope fell to the ground and the detectives observed the defendant pick up the envelope. At this point, defendant seemingly noticed the detectives and shoved the glassine envelope down his pants. The detectives exited the vehicle, detained all three males, and performed a search of the defendant's person. During the search of defendant's person, the police recovered two glassine envelopes of heroin stamped "Got Milk" from inside his pants. In addition, during the search of defendant's person, the Det. Robertson recovered \$4,026.00 in U.S. currency.

Detective Roberts, Det. Donohue and Det. Sgt. Marello went to execute the aforementioned second search warrant in the defendant's apartment with keys recovered from the defendant's person. After checking to make sure no one was in the apartment, the detectives waited until a K-9-unit, Officer Devitt and his canine, responded to the apartment and conducted a dog sniff of the entire apartment. After the dog failed to indicate that contraband was present, the detectives began a manual search. From a standing jewelry box/nightstand in the bedroom, Det. Donohue recovered 180 glassine envelopes of heroin with "Got Milk" stamped on them. He also recovered five glassine envelopes from the same box stamped "Batman" as well as one glassine envelope with no stamp. Det. Robertson also recovered two cell phones from the apartment and 4 pieces of mail addressed to the defendant at the apartment searched.

Defendant was subsequently transported in a police car, by Officer Timothy Dolce and his partner, to the Yonkers Police Narcotics Unit. Upon reaching the Narcotics Unit and removing the defendant from the police car, Officer Dolce discovered five glassine envelopes of heroin stamped "Got Milk" on the rear floor board of the vehicle. Officer Dolce had checked the back of the vehicle before the defendant was placed inside and no such glassine envelopes were present.

On or about June 1, 2017, defendant was charged by felony complaint with criminal possession of a controlled substance in the third degree in City Court, City of Yonkers arising out of the searches executed on June 14, 2016, and May 31, 2017. He was indicted on or about November 21, 2017.

Pursuant to these findings of fact, I make the following conclusions of law:

### **CONCLUSIONS OF LAW**

Here, the defense conceded after the hearing, and the Court finds, the searches of the defendant's person and of his apartment conducted on June 14, 2016 and May 21, 2017 were executed within the confines of and in accord with the search warrants issued by the City Court of the City of Yonkers. Accordingly, the physical evidence recovered by the police pursuant to the search warrants will be permitted to be introduced by the People on their direct case at trial. The defendant's motion to suppress the physical evidence seized pursuant to the search warrants is hereby denied.

As to the Noticed Statements, the Court finds they were voluntarily made and obtained in accord with defendant's Sixth Amendment right to counsel. The defendant was apprised of his *Miranda* rights and waived them. He then made the Noticed Statements. Accordingly, the People will be permitted to introduce the Noticed Statements on their direct case at trial. The defendant's motion to suppress the Noticed Statements is hereby denied.

### Sandoval Hearing

A hearing pursuant to *People v Sandoval*, 34 NY2d 371 (1974) was held to determine the permissible scope of cross-examination concerning the defendant's prior criminal acts should the defendant testify in his own defense. The defendant has the burden of showing that the prejudicial effect of defendant's prior convictions outweighs the probative value (*see People v Sierra*, 167 AD2d 765 [3d Dep't 1990]).

The Court has weighed the potential for undue prejudice against the probative value of each of the defendant's prior convictions which were revealed at the hearing.

After undertaking that analysis, in its exercise of discretion, the court will permit the People to impeach the defendant's credibility on cross examination, should the defendant testify at trial, by referring only to:

- The defendant's convictions of a felony and three misdemeanors, and that
- One of the convictions was for petit larceny

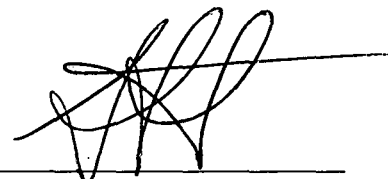
Except as expressly permitted above, the Court will not permit any reference to the following:

- Defendant's criminal convictions or prior bad acts, if any;
- The specific crime or underlying facts of any crime for which defendant was convicted.

If the People believe during trial the defense has opened the door to the introduction of prior convictions and underlying facts precluded by this decision, they may seek the Court's permission to introduce them.

The foregoing constitutes the opinion, decision and order of the Court.

Dated: White Plains, New York  
April 16, 2018



Hon. Larry J. Schwartz  
Westchester County Court Judge