

**People v Maddox**

2018 NY Slip Op 33752(U)

December 5, 2018

County Court, Westchester County

Docket Number: 17-1094

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,

**FILED**

-against- DEC 10 2018

**DECISION & ORDER**

CENDARI MADDOX,

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Indict. No. 17-1094

Defendants.

-----X  
SCHWARTZ, J.,

By Westchester County Indictment Number 17-1094, the defendant is charged with criminal possession of a weapon in the second degree.

On September 6, 2018, September 27, 2018 and November 14, 2018, a *Mapp/Dunaway/Huntley* hearing was conducted before this Court at which the People called Yonkers Police Detectives Daniel Medina and Robert Santobello. The defendant was identified in court.

Received into evidence at the above hearing were the People's Exhibits 10-12 and 16-19. Also received into evidence were the Defendant's Exhibits A-D. The Court *sua sponte* receives Defendant's Exhibit E into evidence.

No witnesses testified for the defendant.

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.

A spontaneous, volunteered statement is one made without any external prompting as opposed to one that is elicited directly or indirectly or otherwise induced by police action. If the statement is truly spontaneous, meaning self-generated, the statement will be admissible even though the defendant was in custody, and

unwarned or improperly warned (*People v Dunn*, 195 AD2d 240 [2d Dept 1994]).

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 September 12, 2017, Detectives Medina and Santobello, assigned then to the Yonkers Police Department Gang Unit, gathered at approximately 5:35 a.m. at Ashburn Ave and Vineyard St. in Yonkers with members of the Yonkers Police Emergency Service Unit and Westchester District Attorney Investigators. They were preparing to execute a search warrant at 8 Stewart Place, Second Floor Apartment, in Yonkers to search that dwelling and the person of Kashawn Reid pursuant to the warrant.

Det. Medina and others moved into position in the front of the dwelling. Det. Santobello and others positioned themselves in the backyard. At 6:01 or 6:02 A.M. ESU yelled "Yonkers Police, search warrant" and began forcible entry into the subject apartment. Det. Santobello then heard a noise coming from a second-floor window. He looked up and saw an air conditioning unit in the window and saw that someone was removing the side panel of the unit. Seconds afterwards, a handgun came out that window (pictured in People's Ex. 18). Det. Santobello radioed to advise a gun had come out a second-floor window.

Det. Medina remained outside in the front of the dwelling while ESU breached and, along with other officers, detained the occupants of the apartment as they were being let out by ESU. Five occupants came out in total, one of whom was Kashawn Reid. The detective heard the transmission from Det. Santobello that a gun had come out of the window from a second-floor window. The defendant was the first occupant Det. Medina saw coming out of the subject apartment. Det. Medina escorted the defendant against a wall, and gave him a quick pat down and placed him into handcuffs for officer safety.

The defendant then asked Det. Medina what was going on. Det. Medina advised the defendant they were executing a search warrant and a gun came out of a window. Defendant, unprompted, said in sum and substance, "I'm going to take that, that was mine. You can let my family go." To confirm the defendant was in fact referring to the gun that had been thrown out the window, and not a potential second gun, the officer asked the defendant to describe the gun. He stated the firearm was silver with a brown handle (together, the "First Noticed Statements").

Thereafter, the defendant was arrested and transported to the police station to be interviewed. The interview was conducted by Det. Medina and Santobello. Det. Medina first stated "We're going to talk about what happened today and then I'm going to take a statement from you. Ok?" After confirming the defendant's pedigree

information, he displayed a *Miranda* waiver card to the defendant and stated "Ok, Cendari, these are your rights. I'd like you to read them, if you understand them, please sign indicating that you understand your rights."

Det. Medina then placed the card down in front of the defendant and handed him a pen to sign. The defendant read the card, signed it, then handed the card back to the detective. The defendant then stated, without being asked a question, "I really don't know anything what you guys are saying, I'll write a statement saying that it's mine so you can let my brother go...". This oral statement by the defendant and his subsequent statements were recorded electronically ("Second Noticed Statement"). He also signed a written statement typed by Detective Medina ("Third Noticed Statement"). In sum and substance, the defendant admitted he was the one who threw the gun thrown out the window and that it belonged to him.

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

### CONCLUSIONS OF LAW

#### **A. Custody/Voluntariness of Statements**

That though the defendant was in custody, the First Noticed Statements are admissible as a spontaneous, volunteered statements not elicited directly or indirectly by police action (*see People v Dunn*). To the extent these statements could be perceived as having been elicited by the officer, they would still be admissible as statements that fall under the public safety exception of the *Miranda* rule (*see People v Williams*, 191AD2d 526 [2d Dept 1993]).

I find that the Second and Third Noticed Statements were the product of custodial interrogation. Pursuant to the standard set forth by the Court of Appeals in *People v Yuki*, the court has considered (1) the amount of time spent with the police, (2) whether the subject's freedom of action was restricted, (3) the location and atmosphere of the questioning, (4) the degree of cooperation exhibited, (5) whether constitutional warnings were given, and (6) whether questioning was investigatory or accusatory in nature.

As the defendant was in custody at the time of these noticed statements, the People were required to show beyond a reasonable doubt the defendant made them after a voluntary, knowing and intelligent waiver of his privilege against self-incrimination and his right to have counsel present during an interrogation (*see People v Rosa*, 65 NY2d 380 [1985]).

Here, since the defendant signed the *Miranda* warning card after being asked to read it and sign it if he understood it, I find that the defendant made a voluntary,

knowing and intelligent waiver of his privilege against self-incrimination and right to counsel. (see *People v Sirno*, 76 NY2d 967 [1990]). That this waiver was a voluntary, knowing and intelligent one is further supported by the evidence that the defendant has been arrested on 13 prior occasions (see *People v Davis*, 55 NY2d 731, 733 [1981]). There were no threats, coercion, pressure or tricks used to compel his waiver (see *id.*).

Accordingly, the People will be permitted to use all the noticed statements on their direct case at trial.

### **B. Probable Cause for Arrest**

That once the police detained the defendant and he made the first noticed statement taking ownership of the gun thrown out the window, the police had probable cause to arrest the defendant.

Accordingly, the noticed statements were not the product of an unlawful arrest and will not be suppressed on such a basis.

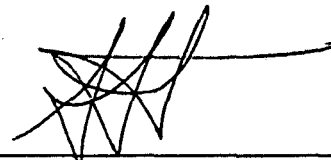
### **C. Abandoned Property/Search Warrant**

That the gun recovered is admissible as abandoned property (see *People v Wright*, 58 NY2d 797 [1983]). To the extent the defendant argues, the search warrant was executed prematurely, before 6:00 A.M., I find that the police properly commenced execution of the search warrant at 6:01 or 6:02 A.M.

Accordingly, the motion to suppress the tangible evidence recovered is denied.

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

Dated: White Plains, New York  
December 5, 2018



Hon. Larry J. Schwartz  
Westchester County Court Judge

To:

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