

**People v Hillard**

2020 NY Slip Op 35579(U)

March 5, 2020

Supreme Court, Westchester County

Docket Number: Ind. No. 20/0016

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

JAMES HILLARD

Defendant.

-----X  
NEARY, J.

DECISION & ORDER

Ind.No. 20/0016

**FILED** TR

**MAR 25 2021**

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

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

The defendant has been indicted for the crimes of Murder in the Second Degree and Criminal Possession of a Weapon in the Third Degree. It is alleged that on or about and between January 12, 2020 and January 13, 2020 the defendant fatally stabbed Denise Smith inside his Yonkers apartment.

Defendant claiming to be aggrieved by the improper or unlawful acquisition of evidence has moved to suppress statements allegedly made by him on January 13, 2020 in the vicinity of 63 Beaumont Circle in Yonkers and later that day at the Yonkers Police Department on the ground that the statements were involuntary and made without benefit of the Miranda warnings.

Defendant further seeks suppression of certain items of physical

evidence contending they were 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 they are 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 decision of the Hon. David S. Zuckerman dated August 14, 2020, pre-trial Huntley, Mapp, Dunaway and Sandoval/Ventimiglia hearings were ordered. On March 3, 2021 a combined hearing was held to address the Huntley, Mapp and Dunaway issues. The Sandoval/Ventimiglia hearing will be conducted at a future date in advance of jury selection.

At the hearing the People called as witnesses Yonkers Police Officer David Lyons, Police Officer Scott Lyons, and Detective Kayla Maher. The Court finds the testimony of the People's witnesses to candid, plausible and fully credible. The defense presented no witnesses and offered no evidence. The People's exhibits included a buccal swab consent form. This Court makes the following Finding of Facts and Conclusions of Law:

### **Findings of Facts**

Around noon on January 13, 2020 veteran uniformed Yonkers Police Officer David Lyons and his partner were on routine patrol in a marked vehicle when they responded to a radio dispatch directing them to 63 Beaumont Circle in Yonkers to investigate a reported dispute at that location between a man and a woman which possibly involved the use of a knife. While en route, a second dispatch provided the officers with the name James Hilliard, a clothing description, adding that someone in the apartment may have been fatally injured.

Upon arrival in the vicinity of the 63 Beaumont Circle address the officers encountered two identified civilian males pointing to the nearby defendant who matched the earlier mentioned clothing description. The defendant approached Officer David Lyons, held out a cell phone and asked him if he wanted to speak with a female with whom defendant was apparently conversing. Officer David Lyons declined the offer and asked the defendant what had happened. The defendant responded: "It was self defense. I stabbed her." When asked by the Officer David Lyons if the woman was still in the apartment the defendant responded affirmatively prompting officers to place him in handcuffs and secure his cell phone. The defendant acknowledged that the apartment was locked and did not object when the officers retrieved a set of keys from his pocket. While his partner

proceeded to enter the apartment, Officer David Lyons placed the defendant into a marked patrol vehicle recovering his wallet in the process.

Shortly thereafter the defendant was transported to the Detective Division in that vehicle now driven by 15 year veteran uniformed Officer Scott Lyons accompanied by his partner, an Officer Saponara. There was no conversation between the officers and the defendant who remained calm and cooperative during the brief ride to the Detective Division.

While in the car awaiting entry into the secure sally port area of the Detective Division, the defendant, unprompted, stated: "It was self defense. I was defending myself. I didn't have any trouble with the law."

Once inside the building the defendant was placed in an interview room shortly after 1:00 PM where over an eight hour period he was provided a MacDonald's meal and bathroom breaks. He continued to be cooperative throughout the afternoon. At approximately 9:00 PM, Crime Scene Tech Ronald Romano, Detective Dale Hughes and Detective Kayla Maher entered the room and asked if the defendant would voluntarily provide a buccal swab sample. They explained the procedure and instructed the defendant he could decline to supply the sample. After the execution of a written consent form signed by the defendant [Peo. Ex. 5(a)], the sample was collected. At about the same time the defendant's sneakers, pants and coat were placed in evidence and he was provided with a standard Tyvek suit.

## **CONCLUSIONS OF LAW**

### **Huntley / Dunaway Issues**

The defendant's first statement to Officer David Lyons upon the arrival of police at the scene was made while he was not in custody and was in response to a question about what happened. Defendant claimed he stabbed the victim in self defense. Officer David Lyons' query about what occurred cannot reasonably be construed as an interrogation. Rather it was investigatory in nature and did not require the issuance of Miranda warnings. The question by Officer David Lyons was clearly an effort to clarify a confusing and evolving situation [See *People v. Flores*, 153 AD3d 1186], and one he was justified in asking under the *DeBour* line of cases given the substance of the earlier radio transmissions he had received.

Notwithstanding the defendant's assertion at the scene that he acted in self-defense when stabbing the victim, police had sufficient cause to detain him briefly while investigating further. Once the body was observed inside the defendant's apartment the officers suspicions quickly ripened into probable cause to arrest.

The voluntariness of defendant's statement inside the patrol car in the presence of Officer Scott Lyons and his partner while awaiting access to the sally port was consistent with his earlier claim and its spontaneity has been

established beyond a reasonable doubt by the People and was not controverted by the defense (See *People v. Lopez*, 150 AD3d 1266; *People v. Jackson*, 150 AD3d 1025; *People v. Reaves*, 112AD3d 746).

### **Mapp /Dunaway Issues**

The People have met their burden of demonstrating that the defendant's arrest was based upon probable cause while the defendant has failed to establish by a preponderance of the evidence that the arrest was in any way defective or illegal.

The seizure by police of the defendant's wallet, cell phone, and clothing are not subject to suppression since all were incident to a lawful arrest. Obtaining the keys to his apartment was permissible under three theories, viz., Consent, Exigent Circumstances, and/or Incident to Arrest.

The Court finds it unsurprising, given the testimony of Det. Maher and both Officers Lyons that the defendant was cooperative and calm throughout their encounters with him that day, that he would not hesitate to voluntarily provide a buccal swab sample when asked to do so. The signed consent form executed by the defendant only serves to strengthen that conclusion.

Based upon the foregoing analysis, the defendant's motion to suppress his statements to police at the scene and in the patrol car is in all respects denied. Similarly, his motion to suppress the aforementioned items of physical evidence including the buccal swab is also denied.

This case is adjourned to **April 15, 2020** at 10:00 AM for a virtual appearance and conference before the Hon. Barry Warhit in the **Trial Assignment Part** at which time the parties should be prepared to discuss a trial date.

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

Dated: White Plains, New York  
March 5, 2020

  
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ROBERT A. NEARY  
SUPREME COURT JUSTICE

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