

**People v Jenkins**

2021 NY Slip Op 34002(U)

August 26, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 20-00233-01

Judge: Robert A. Neary

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**AUG 26 2021**

**TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

MICHAEL JENKINS,

Defendant.

-----X

NEARY, J.

DECISION AND ORDER

Ind. No. 20-00233-01

The defendant has been indicted for the crime of Murder in the Second Degree and related offenses. It is alleged that on or about May 8, 2020, the defendant did shoot and kill another individual in the course of a robbery. The defendant claiming to be aggrieved by the improper or unlawful acquisition of evidence has moved to suppress statements allegedly made by him to detectives of the Peekskill Police Department on May 9 and May 10, 2020 on the ground that they were involuntary made, without the benefit of *Miranda* warnings.

The People must establish the voluntariness of the statements attributed to the defendant beyond a reasonable doubt before they are admissible at trial and that his arrest was based upon probable cause.

Per the decisions of the Hon. Anne E. Minihan, dated December 5, 2020 and June 22, 2021, *Huntley*, *Sandoval* and *Mapp* hearings were ordered to be held prior to trial. On August 16 and August 17, 2021, combined *Huntley*, *Dunaway* and *Sandoval* hearings were held by this Court. Based upon the People's representation that no physical evidence obtained from the defendant's person was going to be offered at trial, the *Mapp* hearing was rendered moot. At this combined hearing, the People called the following witnesses: Peekskill Police Officer Olu Olanokan, Police Officer Angelo Cintron and Detective Matthew Basso. Among the exhibits received into evidence during the hearing were: two (2) video recordings; two (2) *Miranda* Waiver Forms, numerous photographs and a transcript of a Facebook exchange. The defendant called one (1) witness: Detective Alvaro Farias and offered no other evidence.

The Court finds the testimony offered by the People and defense witnesses to be plausible, candid, and fully credible. This Court makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

Shortly before 3:00 A.M. on May 9, 2020, Peekskill Police Officer Angelo Cintron responded to a dispatcher's report of a suspicious vehicle containing a sleeping man

located near 935 Paulding Street in Peekskill. The individual who reported the car as suspicious stated it had been there since about 6:00 P.M. on May 8<sup>th</sup> and the driver had not appeared to change positions. Upon arrival at that location, neither Officer Cintron nor his partner, Officer Olu Olasokan, were able to waken the lone occupant of the car, Emanuel Jordon, and quickly realized that he was deceased from apparent gunshot wounds. The victim's cellphone was amongst the items recovered from the vehicle by police.

The detectives spoke with Emanuel Jordan's girlfriend who told them he left their residence to do a drug deal at around 6:00 P.M. on May 8<sup>th</sup> and never returned. She added that Jordan had arranged the deal using his cell phone.

Forensic analysis of the victim's phone revealed a Facebook exchange at about 5:30 P.M. on May 8<sup>th</sup> between the deceased and "Mob Goon" during which the purchase of a quantity of Percocet was discussed. Attached to the Facebook post by "Mob Goon" was the defendant's picture. Detective Matthew Basso, an experience narcotics investigator with the Peekskill Police Department, recognized the tag "Mob Goon" and the defendant's photograph based upon prior contacts. The police recovered video surveillance from various locations near the Paulding Street crime scene depicting the defendant approaching the decedent's car around 6:00 P.M. and hastily departing the area several minutes later.

The defendant was arrested in a friend's apartment at 807 Main Street in Peekskill. When discovered in the apartment the defendant made the unsolicited statement "You got me" and before leaving the premises requested the police assist him in finding his phone.

The defendant was questioned by detectives at the Peekskill Police Department headquarters on May 9<sup>th</sup> and 10<sup>th</sup>. Both interviews were video/audio recorded. The first session lasted about one hour and fifteen minutes while the second ran approximately twenty minutes. At the outset of each recording, the defendant is advised of his *Miranda* rights, acknowledges same, and agrees to answer questions. The tone of each session is conversational, and the defendant is provided drinks and snacks each day. The defendant is uncuffed and the detectives unarmed. At times during the interview on May 9<sup>th</sup>, the defendant appears to posit some hypothetical scenarios about how the crime occurred and makes inculpatory statements such as acknowledging his social media name is "Goon." At another point, the defendant admits lying to detectives about who he was with during crucial times on the day of the crime after they intentionally mislead him claiming his alibi witness was unresponsive.

During the interview of the defendant on May 10<sup>th</sup>, it appears he has a bandage on his right wrist and a hospital bracelet on his left wrist. These items are not observed on the previous day's recording. Neither the detective speaking with him nor the defendant address the issue of the defendant having been injured overnight. The defendant does not appear to be physically uncomfortable in any way during this second interview.

## CONCLUSIONS OF LAW

### Dunaway Issue

New York Courts have recognized that an arrest need not be supported by information and knowledge that at the time, points directly to the defendant's guilt beyond a reasonable doubt and excludes all possibility of innocence. Rather, probable cause rests on probabilities not certainty. [See *People v. Bigelow*, 66 NY2d 417]. For probable cause to exist, the conclusion must be one that a reasonable person possessing the same expertise, training and experience as the investigating officer would reach. [See *People v. Silas*, 220 AD2d 467]. In the instant case, Peekskill Detective Matthew Basso is a veteran narcotics investigator familiar with the defendant, his colleagues, and their routines.

The Court finds that, in this instance, the police had abundant reasonable and probable cause to arrest the defendant based upon, among other things, his Facebook postings, video surveillance footage of him near the crime scene and the statement of the victim's girlfriend.

### Huntley Issue

The record is devoid of any evidence that the statements attributed to the defendant at the time of his arrest in the Main Street apartment were anything other than spontaneous. While clearly in custody, the *Miranda* warnings were not required because the

statements were not the result of any inducement, provocation, interrogation or its functional equivalent. [See *People v. Lopez*, 150 AD3d 1266; *People v. Jackson*, 150 AD3d 1025].

There has been no evidence adduced during these hearings to suggest the Peekskill detectives acted improperly or deceptively in any manner while interviewing the defendant on May 9<sup>th</sup> and 10<sup>th</sup>. No threats were made, nor promises given. The defendant's constitutional rights were explained to him in a clear, forthright fashion and strictly adhered to by the detectives. The questioning was brief and non-confrontational. The defendant appeared calm, composed and cooperative. While he complained briefly of back pain, he exhibited no visible signs of discomfort.

The defendant argues that his statements must be suppressed because the police engaged in impermissible deception amounting to unconstitutional coercion when informing him that an alibi witness had been questioned and denied being with the defendant near the time of the crime. Courts have found that police may, as part of their investigatory process, deceive a suspect, provided the deception is not so fundamentally unfair as to deny due process and/or likely to induce a false confession. [See *People v. Tarsia*, 50 NY2d 1; *People v. Pereira*, 26 NY2d 265]. Thus, mere deception without more is insufficient to suppress a statement. A review of the taped recording of the defendant's interview with detectives reveals that the defendant appears minimally impacted by the police claim that the alibi witness has told them he was not with the defendant at the time in question. Certainly, there is no indication that the police conduct amounted to an egregious violation of the defendant's due process rights or that the information was likely to induce a false confession.

The defendant's contention that the existence of a wrist bandage and apparent hospital bracelet on his person during the second questioning session amounts to evidence that he suffered abuse at the hands of police such as to require suppression is unpersuasive. The defendant's reliance on the cases *People v. Yarter*, 51 AD2d 835 and *People v. Zaya*, 88 AD3d 918 is misplaced as those cases are clearly distinguishable from the present fact pattern. The People have met their burden of demonstrating the voluntariness of the defendant's statements on May 9<sup>th</sup> and 10<sup>th</sup> beyond a reasonable doubt and they are deemed admissible should the prosecutors offer them on their Direct Case or as impeachment material, if appropriate, should the defendant testify. [See *Harris v. New York*, 401 U.S. 222].

No evidence has been presented that would indicate that the defendant's Sixth Amendment right to counsel had attached or that an attorney had entered the case prior to his being questioned at headquarters by detectives. It appears the defendant never invoked his right to counsel, and no accusatory instrument was filed until after the questioning of the defendant.

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

Dated: White Plains, New York  
August 26, 2021

  
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ROBERT A. NEARY  
SUPREME COURT JUSTICE

*People v. Michael Jenkins*  
Indictment No. 20-00233-01

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