

People v Brogno

2023 NY Slip Op 34812(U)

October 16, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 23-70459-001

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

**FILED
AND
ENTERED
ON 10-16-2023
WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

ANTHONY BROGNO,

Ind. No. 23-70459-001

Defendant.

-----X

NEARY, J.

The defendant has been indicted for the crimes of Murder in the Second Degree and Conspiracy in the Second Degree. It is alleged that on or about September 25, 2021, the defendant did conspire with two (2) others to cause the death of Aaliyah Waiters. 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 Mount Vernon Police Department on December 3, 2021 on the ground that they were involuntarily made.

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COUNTY CLERK
COUNTY OF WESTCHESTER

The People must establish the voluntariness of the statements attributed to the defendant beyond a reasonable doubt before they are admissible at trial.

Per the decision of this Court dated June 5, 2023, *Huntley* and *Sandoval/Ventimiglia* hearings were ordered to be held prior to trial. On October 4 and October 10, 2023 a *Huntley* hearing was held by this Court. At this hearing, the People called the following witnesses: New Rochelle Police Department Sergeant Sean Kane, New Rochelle Police Department Detective Oisín McGloin and Mount Vernon Police Department Detective Darius Mitchell. The following exhibits were received into evidence during the hearing: a dash cam video, several photographs, a five (5) hour videotaped interview of the defendant and a *Miranda* form. The defendant called no witnesses and offered no evidence.

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

FINDINGS OF FACTS

On September 25, 2021, twenty year old Aaliyah Waiters was found mortally wounded in front of 237 South Third Avenue in Mount Vernon, New York. After a lengthy investigation, detectives identified the defendant as a possible suspect. On October 27, 2021, members of the New Rochelle Police Department under the supervision of Sergeant Sean Kane and in possession of a search warrant for the defendant's person and cell phone signed by Supreme Court Justice Anne Minihan, effected a traffic stop of a car in which the defendant was

the sole passenger after observing the female driver commit several Vehicle and Traffic Law violations in that city

Upon approaching the passenger side of the stopped vehicle, Sergeant Kane and Detective Oisin McGloin observed the defendant hunched over in the front passenger seat manipulating some object on the floor board. Once the defendant exited the car, the officers recovered, on the floor of the front passenger seat, a bag containing a dismantled handgun in three pieces including a partially loaded ammo clip.

The defendant was arrested for Criminal Possession of a Firearm, advised of his *Miranda* rights verbally at the scene by Sergeant Kane, and taken to New Rochelle Police Department Headquarters. Aware of Mount Vernon Police Department's interest in the defendant as a suspect in the Waiter's homicide, New Rochelle authorities notified detectives in that adjoining community of the defendant's arrest.

Later on October 27, 2021, Mount Vernon Detectives Mitchell and Valenti interviewed the defendant in a room at the New Rochelle Police Department Headquarters. The interview lasted several hours and was recorded on video in its entirety. The defendant was advised of his constitutional rights both verbally and in writing. He agreed to speak with the detectives after indicating he understood his rights.

During the course of the session, the defendant made several admissions and acknowledged relationships with certain other individuals allegedly involved in the above-mentioned homicide.

CONCLUSIONS OF LAW

Dunaway Issue

Clearly, the detectives had sufficient probable cause to arrest the defendant. The vehicle stop was permissible based upon the driver's erratic operation of the car and the existence of a valid search warrant for the defendant's person. The defendant's furtive movements in the vehicle were visible to the officers outside and consistent with the defendant secreting something on the floor or under his seat. When police observed the slide of a handgun protruding from a bag on the front passenger floor, the defendant was removed from the vehicle. Upon examining the bag, the officers recovered three pieces of a fully disassembled handgun with appropriate ammunition. The defendant was placed under arrest and advised of his *Miranda* rights.

When the female driver consented to the search of the vehicle, the defendant spontaneously stated to police, before any questions were put to him, that everything on his side of the car belonged to him.

Sergeant Kane's advisement of the *Miranda* rights at the scene failed to include an inquiry as to whether the defendant, with the rights in mind, wished to submit to questioning,

Huntley Issue

Any arguable defect in the verbal *Miranda* warnings at the scene by Sergeant Kane were attenuated by the scrupulous adherence to the advisement of rights evident on the video taped session hours later at headquarters. At the New Rochelle Police Department, the

Mount Vernon detectives are seen on the video discussing in detail the *Miranda* rights with the defendant after reading them to him and providing him with a copy thereof. Also in evidence is a signed *Miranda* form executed by the defendant. The defendant clearly agrees to speak with the detectives and spends the next several hours calmly denying involvement in the crime.

The interview of the defendant, though lengthy, was conversational throughout. The defendant was given water and opportunities to rest. The record is devoid of any evidence that the defendant was coerced, threatened or induced in any manner that would overcome his ability to decide whether or not he wished to submit to questioning. His eagerness to profess his innocence is further indication of his voluntary participation.

Based upon the foregoing analysis, the Court finds that the People have met their burden of proving beyond a reasonable doubt that the defendant's statements both at the scene of the car stop and at police headquarters were given freely, knowingly and voluntarily and are available to the People both on the direct case and for cross examination purposes under the *Harris* line of cases.

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

The parties are directed to be prepared to commence jury selection on October 30, 2023.

Dated: White Plains, New York
October 16, 2023


ROBERT A. NEARY
SUPREME COURT JUSTICE

People v. Anthony Brogno
Indictment N901 23-70459-001

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