

**People v Whiting**

2016 NY Slip Op 33013(U)

May 6, 2016

County Court, Erie County

Docket Number: 01033-2015

Judge: Kenneth F. Case

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STATE OF NEW YORK  
COUNTY COURT : COUNTY OF ERIE

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**THE PEOPLE OF THE STATE OF NEW YORK**

**DECISION AND ORDER**

v.

**Indictment No. 01033-2015**

**DANIEL WHITING**

**Defendant.**

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APPEARANCES:

Michael J. Flaherty, Jr., Acting Erie County District Attorney  
*Colleen Curtin-Gable, Assistant District Attorney*  
*Katherine S. Lavin, Esq., Assistant District Attorney*  
Appearing for the People

*Andrew C. LoTempio, Esq.*  
Appearing for the Defendant

**Case, J.**

In his Omnibus Motion, the Defendant requested an Order suppressing at trial the People's use of certain statements that he made to members of law enforcement during the course of their investigation. As a result, this Court scheduled an evidentiary hearing for December 9, 2016. Based upon the evidence presented at said hearing, the Defendant's motion to suppress is hereby denied.

**FINDINGS OF FACT**

Buffalo Police Detective Rodney Pietras, a twenty three-year veteran of the Buffalo Police Department, testified that on July 1, 2015, he was investigating the homicide of Ashley Whiting, the Defendant's wife, which occurred at her home in the early morning hours of that day. As part of the investigation, he interviewed the Defendant two separate times at the Erie

County Medical Center on July 1, 2015. He recorded both interrogations on his telephone, which were transferred to two separate compact discs and admitted into evidence as People's Exhibit 1 and 2.

The first interview took place at about 4:30 a.m. inside of an individual patient room at the hospital. He was alone with the Defendant, and he testified that he wanted to speak to him because the Defendant was "the only surviving person in what appeared at the time to be a double stabbing." He advised him of his Miranda rights from a pre-printed, Buffalo police issued card that was admitted into evidence as People's Exhibit 3. The Defendant asked if he was under arrest, to which the detective responded "not at all." The Defendant verbally agreed to speak to the detective and waived his rights to remain silent.

During this first interrogation, which lasted for approximately forty minutes, the Defendant appeared to understand the questions he was being asked and responded coherently. He never asked for an attorney, nor did he ask for the questioning to stop or that he would no longer answer questions. The detective testified that he made no threats or promises during the questioning, and stopped the interview when it became necessary for the Defendant to receive medical treatment.

After checking with medical personnel to make sure it was alright, Detective Pietras went back to speak with Defendant at around 4:00 p.m. This time, he brought Detective Brian Lasko with him. Again, he advised the Defendant of his Miranda rights, and again he indicated that he understood them and would speak to the detectives. His answers were coherent and logically related to the questions being asked. As the interview carried on, the Defendant became more and more agitated, at one point saying "either wrap this up or I'm going to say the word "lawyer"

so you wrap it up.” Despite this, the Defendant never asked to speak to a lawyer, and Detective Pietras testified that the Defendant was cooperative during the second interview, which lasted approximately two hours.

### CONCLUSIONS OF LAW

#### A. FIFTH AND SIXTH AMENDMENT PRINCIPLES

The Fifth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution precludes the use of confessions or admissions that were made involuntarily. The Sixth Amendment to the United States Constitution prevents the People from introducing an accused’s statement if it was elicited in violation of his right to consult with counsel. Collectively, these protections are codified under CPL § 60.45.

In the Fifth Amendment sense, a statement will be deemed “voluntary” when the People demonstrate beyond a reasonable doubt that the Defendant’s decision to speak with law enforcement was the “product of his free and rational choice” (*Greenwald v. Wisconsin*, 390 US 519 [1968], *People v. Huntley*, 15 NY2d 72 [1965]). More particularly, if the statement was the product of custodial interrogation, the People must establish that the Defendant was “adequately apprised” of his Fifth and Sixth Amendment rights, and that he knowingly and voluntarily waived them prior to the initiation of any questioning (*Miranda v. Arizona*, 384 US 436 [1966]; *Moran v. Burbine*, 475 US 412 [1986]). However, once a person in custody unequivocally invokes his Fifth Amendment right to be silent or Sixth Amendment right to counsel, any statements elicited by the police thereafter may be considered “involuntarily made” (*People v. Harris*, 57 NY2d 335 [1982]; *People v. Ferro*, 63 NY2d 316 [1984]).

To determine whether a defendant is “in custody” for these purposes, “the test is . . . what a reasonable man, innocent of any crime, would have thought had he been in the Defendant’s position” (*People v. Yukl*, 25 NY2d 585 [1969]). Interrogation occurs where the investigating officer’s inquiries, comments, or actions are “reasonably likely to elicit an incriminating response” (*Rhode Island v. Innis*, 446 US 291 [1980]; *People v. Lynes*, 49 NY2d 286 [1980]). An effective waiver of rights will be found only where the “totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension” in the rights being given (*Burbine, supra*; *People v. Cunningham*, 49 NY2d 203 [1980]).


#### C. ANALYSIS

Based upon the evidence presented, the Court finds that all of the Defendant’s statements were voluntarily made pursuant to CPL 60.42. There was no evidence of any force, threats or other coercion on the part of the detectives. Based upon the totality of the circumstances, the Defendant was not in custody at the time of the interrogations, but nonetheless he was adequately apprised of his Miranda rights before any questioning commenced. He knowingly and voluntarily waived his right to remain silent and agreed to speak to the detectives about the events in question. The Defendant never requested to have a lawyer present or to consult with a lawyer before speaking. Despite the evidence that the Defendant was in a hospital for injuries and had surgery in between the two interrogations, the evidence also revealed that he understood the questions being asked and made appropriate and logical responses.

For these reasons, this Court finds that the statements were voluntary and not in violation of any of his constitutional rights, and therefore they shall not be suppressed at trial.

WHEREFORE, the Defendant's motions to suppress are DENIED.

Dated: May 6, 2016  
Buffalo, New York

  
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Hon. Kenneth F. Case, J.C.C.

**GRANTED**

MAY 09 2016

BY   
ELIZABETH E. MANNING  
COURT CLERK