

**People v Thomas**

2013 NY Slip Op 34068(U)

January 7, 2013

County Court, Westchester County

Docket Number: 11-1255

Judge: Barbara G. Zambelli

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FILED  
AND ENTERED  
ON  
**JANUARY 7, 2013**  
WESTCHESTER  
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No: 11-1255

- against -

ENGLISH THOMAS,

DECISION AFTER HEARING

Defendant.

-----X

ZAMBELLI, J.

The defendant has been indicted for the crimes of murder in the second degree (two counts), attempted murder in the second degree, assault in the first degree (three counts), burglary in the first degree, criminal possession of a weapon in the second degree (two counts) and tampering with physical evidence allegedly committed on or about April 21, 2010 in the City of Yonkers.

By decision and order dated February 3, 2012, the undersigned ordered a pretrial Rodriguez hearing and Huntley hearings. Defense counsel conceded that the identification procedures conducted with Rahkia Hoist were confirmatory and there was no objection to an in court identification of the defendant by Ms. Hoist. The hearing was held on January 3, 2013 wherein Detective William Craft, Detective Vincent DiDio of the Yonkers Police Department and Special Agent Carmine Esposito of the FBI gave testimony.

*TR*

**FILED**

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CLERK  
COUNTY OF WESTCHESTER

### FINDINGS OF FACT

The credible testimony adduced at the hearing on this case established that on April 21, 2010, Detective William Craft along with Detective Vincent DiDio of the Yonkers Police Department undertook an investigation into a homicide occurring at 1159 Yonkers Avenue in Yonkers that day. Detective Craft learned that the suspects in the homicide fled the scene in a dark blue Ford F150 pick up truck NY DLM2196. Further investigation revealed that the owner of the vehicle was Tracy Hinton of 108 Cedar Road, West Hempstead, NY. The detectives did not know at the point this information was received who was suspected of the homicide. They went to the law enforcement community in Nassau County to notify them to be on the look out for this vehicle. On May 3, 2010, Detective Craft, Detective DiDio, Detective Sergeant McCue and Detective Benash all of the Yonkers Police Department went to the Nassau County Intelligence Division. That evening the detectives received information that the vehicle had been located at 108 Cedar Road. A surveillance van was dispatched. The vehicle had been stopped in the area of 108 Cedar Road. The driver, defendant herein, had been issued a summons, placed under arrest for marijuana possession, and brought into the fifth precinct. At approximately 10:15 p.m., Detective Craft and Detective DiDio met the defendant. He was seated on a bench in the precinct, one hand cuffed to a rail. The detectives secured their weapons and joined defendant in this room. Detective Craft introduced himself and Detective DiDio and said to defendant they would like to speak with him. They did not identify themselves as Yonkers Police Detectives. Defendant agreed. Detective Craft took defendant's information including his name, date of birth, address and a phone number which he then corrected and gave a

different number. Defendant told them he lived with his Aunt, Tracy Hinton, his grandmother and cousin whose names he did not want to provide. Detective Craft then read defendant each of his Miranda rights from the card in evidence as Exhibit 568. He had borrowed a card from the local police. Defendant acknowledged he understood his rights, signed and dated the card confirming he had been told his rights. Defendant was offered water. The Detective proceeded to question the defendant while writing the detective's question and the defendant's answer. The interview ceased at 10:45 p.m. when the defendant stated he did not want to speak any more and wanted an attorney. The detectives thereafter learned defendant was issued a desk appearance ticket.

Special Agent Carmine Esposito of the FBI assisted in the investigation into the Yonkers homicide. He was assigned to the gang squad in Manhattan; charged with investigating a series of gang related homicides, assaults, and drug dealing in Rockville Center. Charles Parsley and Kasaun White were part of his investigation into gang activities. Parsley and White were also suspected in the Yonkers homicide. In January of 2011, Special Agent Esposito became aware of Rahkia Hoist through an email he had been provided concerning text messages between Hoist and defendant. The text messages were entered into evidence at the hearing. They had been boyfriend and girlfriend since 2009. Defendant was believed to be the driver of the vehicle in the Yonkers homicide. On January 20, 2011, in the late morning, around noon, Special Agent Esposito, Detective Meehan of the Rockville Center Police Department and Detective Aponte of the Nassau County Police Department went to defendant's place of employment; the U.S. Merchant Marine Academy where defendant worked in the kitchen. They were

brought to defendant's work location by his supervisor. Special Agent Esposito gave defendant his credentials and asked defendant if he was willing to speak to them back in the police office at this location. Defendant said "yes," and they walked back to the office. Defendant was not cuffed. Four of them went into a small room and sat at a table. Special Agent Esposito asked defendant a series of questions to see if he was willing to cooperate. Defendant denied knowing Hoist. He knew Kasaun White his cousin, but not Parsley. He said he knew nothing about a homicide. He stated it was impossible for him to be in a video on the RFK Bridge on April 21, 2010. Special Agent Esposito's voice was raised because he knew defendant was lying and told him as much. He told him that it was a separate crime to lie and he could be arrested. Defendant said he knew that and he wasn't lying. Defendant was defensive. Defendant told him if they had a case to go ahead and prove it. Special Agent Esposito said they would. Defendant asked if he was under arrest. Special Agent Esposito told him he was free to go at anytime. Defendant told him he did not want to speak to them any longer. The Special Agent left the room. The interview lasted for 10-15 minutes.

On October 19, 2011, the defendant was arrested by Detective DiDio on an arrest warrant for the Yonkers homicide. He was transported to the Yonkers City Jail where he was processed. At approximately 12:07 p.m. he was transported to the Westchester County Courthouse in White Plains to appear before the judge that issued the arrest warrant. The defendant was brought in the sallyport and held in an interview room in the holding area. While in the interview room, defendant appeared unhappy. He was sitting at a conference table by himself, his head leaning down. Detective DiDio was seated

approximately 10 feet away. Defendant asked Detective DiDio what was going to happen next. Detective DiDio asked him if he had ever been arrested or been in state prison. Defendant answered he had never been in state prison. Detective DiDio told defendant that he was going to be taken upstairs in front of the Judge and would most likely be remanded to the county jail. Defendant picked his head up, shook his head back and forth, almost in disbelief and asked why it took so long for them to arrest him since the Yonkers detectives had spoken to him a long time ago. Detective DiDio explained that since defendant didn't want to talk to them without an attorney their investigation had to take a different route to obtain evidence enough for an arrest. Defendant made no further statements.

### **CONCLUSIONS OF LAW**

#### **Statements to Detective Craft and Detective DiDio on May 3, 2010**

"The Supreme Court has recognized that "routine booking questions" constitute custodial interrogation. Nevertheless, it has held that answers given in response to such questions fall outside the protection of Miranda if they are "reasonably related to the police's administrative concerns" (Pennsylvania v. Muniz, 496 U.S. 582, 601-602, 110 S.Ct. 2638, 2650, 110 L.Ed2d 528; see also, United States v. McLaughlin, 777 F.2d 388, 391-392; United States v. Sims, 719 F.2d 375, 378, cert. denied 465 U.S. 1034, 104 S.Ct.1304, 79 L.Ed.2d 703). The exception derives from the essential purpose of Miranda - to protect defendants from self-incrimination in response to questions posed as part of the investigation of a crime, as distinguished from noninvestigative inquires." (People v. Rodney, 85 N.Y.2d 289 at 293).

The detective's questioning of the defendant while in custody without being advised of his Miranda rights on May 3 was clearly not incidental to a booking process or for the purpose of obtaining biographical information for administrative purposes. The questions were in furtherance of the investigation into the Yonkers homicide. Thus the pre Miranda statements are suppressed. The post Miranda statements on May 3 are suppressed as well since the facts establish there was no pronounced break in the interrogation to dissipate the taint from the Miranda violation. (People v. Paulman, 5 N.Y.3d 122, 130-131; People v. White, 10 N.Y.3d 286).

#### **Statements in Merchant Marine Academy on January 20, 2011**

Defendant contends he was in custody when questioned by the Special Agent and therefore his statements must be suppressed because he was not given Miranda warnings.

In deciding whether defendant was in custody prior to receiving Miranda warnings, subjective beliefs of a defendant are not to be the determinative factor, but rather what a reasonable man, innocent of any crime, would have thought had he been in the defendant's position. (People v. Yukl, 25 N.Y.2d 585)

The facts in this case establish that defendant voluntarily accompanied the police to the police station room at his place of employment. There is no evidence he was ordered to accompany the police or that he was restrained in any manner. He was advised he was free to leave, he was not under arrest, and he did leave. Accordingly, a reasonable person innocent of any crime would not have believed he was in custody.

The motion to suppress his statements on this date are denied.

**Statements on October 19, 2011 in the room in the holding area of the lock up**

Defendant's right to counsel had attached, and any statement he made was inadmissible unless he had waived his right to counsel in the presence of counsel (People v. Samuels, 49 N.Y.2d 218, 424 N.Y.S.2d 892, 400 N.E.2d 1344) or the statement was spontaneously volunteered and not the result of "inducement, provocation, encouragement or acquiescence" (People v. Maerling, 46 N.Y.2d 289, 302-303, People v. Gonzales, 75 N.Y.2d 938)

Defendant's statement to Detective DiDio was wholly self-generated and not the result of inducement. He initiated the exchange. The Detective's question to him was for clarification and was neither intended nor objectively likely to elicit an inculpatory statement from the defendant. (See, People v. Gonzales, Id; People v. Lynes, 49 N.Y.2d 286).

Accordingly, the motion to suppress his statements are denied.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
January 7, 2013

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE