

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT CRIMINAL PART 3**

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff(s)

DOCKET NO. 2013NA027341

Present:

against

Hon. SUSAN T. KLUEWER

DOLORES SHARPE,

Defendant(s)
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Decision After Hearing

Defendant's application for an order suppressing the statements specified in the People's "710.30" notice is granted to the extent that the statements " I don't have to listen to you, I'm a cop," "you don't have enough time on the job to be telling me what to do," and " I am a Nassau County Police Officer and I don't have to show you anything" are suppressed.

Defendant presently stands accused by two informations filed under this docket of resisting arrest and harassment in the second degree (see Penal Law §§ 205.30, 240.26[1]) on account of incidents that are alleged to have occurred on November 29, 2013 at 188 Hempstead Turnpike, West Hempstead, New York. The former is alleged to have occurred at 5:35 p.m.; the latter at 5:30 p.m. By their "710.30" notice, the People advise of their intention to offer the following statements they assert Defendant made at the scene of incident at 5:30 p.m. to "PO Gladitz/PO Volpe":

"I'm a fucking cop, why are you pulling me over, I don't care who you are. I don't have to listen to you, I'm a cop, you don't have enough time on the job to be telling me what to do. I am a Nassau County Police Officer and I don't have to show you anything."

By order dated May 27, 2014, I granted Defendant's application to suppress statements contained in the People's "710.30" notice to the extent of putting the issue of whether these statements should be suppressed as the product of coercion, improper promises, or on account of a violation of the requirements of *Miranda v. Arizona* (384 US 436 [1966]) down for a pretrial hearing. The

evidentiary portion of the hearing took place July 10, 2014. The hearing concluded September 2, 2014 with the submission of post-hearing memoranda. The only witness to testify at the hearing was Nassau County Police Officer Charles Volpe.

Officer Volpe testified that he was on duty, assigned to the Fifth Precinct, on November 29, 2013; that he was assigned to the day shift, 7:00 a.m. to 7:00 p.m.; that at about 5:30 p.m., he was at a "Savers" store parking lot at Mayfair Avenue and Hempstead Turnpike in West Hempstead; that he was "responding back" to a "call for an accident that had occurred earlier in the day;" that he was looking for a car that was involved in that earlier accident; that he had a "brief interaction" with Defendant around 5:00; that he had "another interaction" with her a few minutes before 5:30 p.m.; that at 5:30 p.m., he was in a marked radio patrol car; that Defendant was in her car; that he "put on the Turret lights on my vehicle that indicate I would like her to pull over;" that Defendant "pulled over immediately;" that both of their vehicles were facing south on Mayfair Avenue; that "[b]efore I could even get out of the car, she had opened up her car door and approached my vehicle;" that Defendant was "asking me why I was pulling her over;" that "[s]he had told me already that she was a cop;" that she was "just screaming at me;" that "I was asking her to go back to her vehicle;" that "I was still inside my vehicle;" that she was "belligerent" and "screaming" and "just very angry;" that her words were "[d]idn't I tell you that I was a cop? Why the fuck are you pulling me over;" and that "I can't remember exactly everything that she said, but that was the gist." After having his recollection refreshed by looking at the "710.30" notice, Officer Volpe testified that "I had asked to see her ID;" that "she had said she did not have to show me anything;" that "[s]he said to me - - she was asking me how much time I had on the job;" and that "[s]he said she didn't have to listen to me, that she was a cop. And that was basically it." He further testified that the period of time "during which she made those statements" was "[a] few minutes;" that "[d]uring that specific interaction it was just a few minutes;" and that he was sitting "in my police car [when she was saying those things]." He then testified that their first interaction "was when I had gone into the parking lot looking for a previous vehicle;" that "I had, I guess been blocking her spot to get into a parking spot;" that "I saw that she was waiting for me to move, or I guess I was waiting for her to move;" that "I didn't know why, you know, her car was there;" that "I asked her to roll down her window;" that "that's when we first started interacting;" that Defendant was not under arrest during the first encounter; that the first thing he said to her when he pulled her car over was that "I asked her to get back into her vehicle;" and that before he asked her to do that, she said "the things [I already said]; that she

wanted to know why I was pulling her over. She was telling me that she didn't need to listen to anything that I was saying." He further testified that Defendant's statements were not made in response to any questions he asked; that he "was explaining to her to sit in her vehicle;" that a second officer — Officer Gladitz — had come and asked her to go back to her car; that Defendant "wound up going back;" that "we went to her vehicle and tried getting some identification from her;" that Defendant was not under arrest at this point; that they had not taken her into custody; that she had not been put in handcuffs at any time up to that point; that neither he nor Officer Gladitz has made any threats or displayed a weapon; that neither of them had made any promises; and that the only question asked of Defendant while at her car was that she show him identification. He next testified that after a "few minutes" she produced her identification; that "I took her identification and I walked back over to my police car;" that "I was just looking to see the validity of the identification;" and that "right after that moment is when there was a brief scuffle between Officer Gladitz and [Defendant]. So I had gone over to assist him." He then testified that Defendant was not under arrest at the time he was "running" her identification; that she was not taken into custody "up to that point;" and that neither he nor Officer Gladitz had displayed their weapons. When asked if either he or Officer Gladitz used any physical force against Defendant, either to get her back to her car or to get her to produce identification, Officer Volpe testified that "when she tried producing [the identification], she showed it;" that "she did not give it to us;" that she "showed it and taken it away in a manner that it was too quick for either of us to see it, to view it;" that "I asked her again, take the identification out to show to us once more;" that "the second time she did I had reached for it;" that, "as I reached for her identification she pulled back, but I kept it in my hand;" that that "was the only type of physical nature [sic] that had gone on;" that "[t]here was a chain that was attached to the ID;" that "it had snapped off during that;" and that "at the moment that she had taken that chain that had broken off and swung it towards [Officer Gladitz] she was put into custody right after that." Officer Volpe estimated that from the time he first pulled Defendant over to the time Defendant was put in handcuffs, 20 minutes elapsed, and he testified that Defendant was placed under arrest at about 5:30 p.m.

On cross-examination, Officer Volpe testified that the first time he was in the parking lot on November 29, 2013 was "[m]aybe about an hour before [he came in contact with Defendant];" that he understands that Defendant is a police officer; that he did not make any arrests when he was in the parking lot; that he was in the parking lot because "I was getting called back because one party of the accident didn't. . . know that their car was involved in an accident;" that this "was just about

the same time” of his initial contact with Defendant; that he does not remember the name of the person he was looking for; that he never found the person he was looking for; that “it was a parked car;” that the parking lot is behind “multiple stores,” one of which is “Savers;” that he thought Defendant was trying to park; that “she had told me that’s what she was doing;” that Defendant “had the car sitting idling;” that “I was just in front of it;” that “[s]he was just in front of me;” that “we were facing each other;” that he was also idling;” that he did not notice whether there was a parking spot to his right that she was trying to get to; that she parked her car “further down;” that he did not at that time know Defendant was a police officer; that they had a conversation; that “[s]he said to me that she was waiting to go into a spot;” that “I had mentioned to her about the tint on her windows;” that “they were extremely dark;” that he “believe[s]” this conversation took place after “she exited her car the first time [to go into the store];” that he did not issue a ticket; that Defendant identified herself to him at that point; that he had an indication from Defendant that she was a police officer before he decided to “do anything” regarding her; that there came a time when Defendant exited the store to get back into her car; that he observed her walking out; that he made no comments to her as she emerged from the store; that he was still in his car; that the only time he got out of his car was “when I pulled her over;” that there was nothing preventing him from issuing her a ticket for tinted windows before she got back into her car and started to drive; that “I just wanted to make sure my prior investigation was done properly;” that he did not block her in the parking lot after she got back into her car; that he followed her out of the parking lot; and that he did this after she informed him she was a police officer. When asked if he believed her, Officer Volpe responded that “I did not think that the way that she had acted she was a police officer, no,” and he testified that, in the parking lot, she cursed him; that she said “shit, fuck, fucking cop. . .that kind of thing;” that she said “I’m a fucking cop;” that this did not make him angry; and that it made him upset. Following a lunch break, Officer Volpe testified that Defendant was in her car, driving, when he put on his Turret lights; that she drove about “forty feet, thirty feet;” that he waited for her to drive before pulling her over; that he pulled her over because of the tinted windows and “because she identified herself verbally as a police officer;” that “I felt it was my duty to further investigate whether or not she was, in fact, a member of the service;” that he had asked her for “ID” prior to putting on the Turret lights; that she did not then produce identification; that he does not remember whether she ignored the request or responded verbally; that when he pulled her over she was not free to leave; that she got out of her car; that he did not order her to stay in the car; that she wanted to know what she was being pulled over for; that he did not tell her why; that she got back in her car; that

she was not free to go when she got back in her car; that Officer Gladitz escorted her back to her car; that Officer Gladitz did so before he (Officer Volpe) took her identification; that he did not see whether Officer Gladitz put her back in her car or kept her outside the car; that Defendant was outside her car when he (Officer Volpe) got her "ID;" that she "flashed it in front me and pulled it back quick — too quick for me to actually view it;" that he asked for it again; that she showed it again; that he grabbed it; that his grab "took a certain amount of force;" that he initiated "some physical action;" and that Defendant was not at that point "free to go."

Upon the People's objection to questions about what Defendant said after Officer Volpe grabbed her identification, colloquy ensued outside the presence of the witness about the existence of other statements, during which the People mentioned the Defendant's "continuing to speak" after she was placed under arrest. The People asserted, first, that they had no intention to "go into [the additional statements]" but that they would not "have a problem" if defense counsel intended to "expand the scope of the hearing" to cover statements not included in the notice. Defense counsel stated that it was not his "burden," disputed that the People established the proper sequence of events, and asserted that there was no testimony about some of the statements contained in the People's notice. Both sides then acknowledged the existence of "taped statements" which the People insisted are "well beyond the scope of this hearing" and "not what the People are seeking to introduce." When cross-examination resumed, Officer Volpe testified that Defendant made the statements "I'm a fucking cop," "[w]hy are you pulling me over," and "I don't care who you are" when Defendant "was at the window of my car;" that she made the statements "I don't have to listen to you," "I'm a cop," "You don't have enough time on the job to tell me what to do" sometime "after the initial stop;" that he does not remember whether "that" was recorded; that he could not say if it was before or after some questions were asked; that Defendant made the statement "I'm a Nassau County police officer and I don't have to show you anything" after he had taken her identification; and that "I took out my cell phone and I recorded [statements]."

The People had no questions for re-direct.

In her post-hearing submission, Defendant urges, in essence, that because, at the time he pulled her over, Officer Volpe suspected her not only of driving a car with unlawfully tinted windows, but also of criminal impersonation, he had an "unequivocal duty" to advise her of her *Miranda* rights before "questioning her" and

before asking her to produce identification. She further urges that Officer Volpe was in any event obligated to advise her of her rights because she was not free to leave and because he used physical force to “snatch her badge.” And she posits that since her statement that she is a cop is what prompted an investigation about whether she was in fact “on the job,” that statement “automatically” transformed the investigation into a custodial setting.

By their submission, the People urge that Defendant made all of statements that are a subject of this hearing spontaneously, that she made them while she was not in custody, and that none is the product of any kind of coercion. They posit that she was in police presence for only a short time when she made each of the statements, that there was no significant restriction on her movements, that she made the statements in a neutral, public place, and that “any questioning” was merely investigatory. They also urge that suspecting someone of a crime “is not enough to trigger custody,” that Officer Volpe’s state of mind is irrelevant, and that, unlike admitting one committed a crime, Defendant’s initial statement that she is a police officer is not one that can reasonably provoke an expectation that custody is imminent. Although the People tacitly acknowledge in their post-hearing submission that Defendant did not make all of the statements they attribute to her in one conversation, the People nonetheless, as they did at the hearing itself, proceed as if she made all of them under one, uniform set of circumstances. I conclude, however, that they failed to prove that this is so.

The People’s evidentiary presentation leaves no doubt that no reasonable person, innocent of any crime, who, without invitation or direction, gets out of her car and proceeds to the car of a police officer who has just pulled her over to announce, while the other officer is still seated, that she, too, is a police officer and to ask why she was being pulled over, would believe that she was then in custody so as to trigger an obligation to, among other things, advise her that she has the right to remain silent, even if — and the record establishes otherwise — Officer Volpe had then asked any questions instead of merely directing that Defendant return to her car (*see People v. Yukl*, 25 NY2d 585, 307 NYS2d 857 [1969]; *see also People v. Mathis*, 136 AD2d 746 523 NYS2d 915 [2d Dept 1988]); *and see Miranda v. Arizona, supra*). Indeed, since the current record demonstrates that it is not unlawful for Defendant to represent that she is a police officer, her statement that she is one could not possibly prompt her to believe that she was about to be placed in custody, even if Officer Volpe was suspicious of the representation (*cf. People v. Yokl, supra; People v. Davis*, 224 AD2d 541, 637 NYS2d 997 [2d Dept 1996]; *see also People v. Colon*, 54 AD3d 621, 864 NYS2d

14 [1st Dept 2008]). Further, I am satisfied beyond a reasonable doubt that nothing Defendant said to Officer Volpe while she stood at his car window is the product of coercion, threats, or improper promises (see *People v. Witherspoon*, 66 NY2d 973, 498 NYS2d 789 [1985]; *People v. Anderson*, 42 NY2d 35, 396 NYS2d 625 [1977]). Thus, none of these “car window” statements is suppressible. But although Officer Volpe at least implied on direct examination that Defendant made all the statements contained in the “710.30” notice during that one brief interaction before she was escorted back to her car, the record as a whole demonstrates otherwise.

I note that, on direct examination, Officer Volpe testified that he could not remember “exactly everything” Defendant said, and that the “gist” of what Defendant said “while I was still inside my vehicle” was her asking why she was being pulled over, her announcing that she was a police officer, and her cursing. It was only after having his recollection refreshed by looking at the “710.30” notice that Officer Volpe made mention of the statements “I don’t have to listen to you,” “[y]ou don’t have enough time on the job to be telling me what to do” and “I don’t have to show you anything.” He did this after stating “I had asked to see her ID,” and before repeating, in general, unhelpful terms, that she made “those statements” and that she was “saying these things” while he was seated in his car. I also note that Officer Volpe testified that he asked Defendant no questions while he was seated in his car, and that he asked her for identification after Officer Gladitz had escorted Defendant back to her car and after he (Officer Volpe) got out of his car to go over to hers. And I note that, during the colloquy following the People’s objections to questions about what Defendant said after Officer Volpe took her identification — an incident, the timing of which is itself somewhat unclear — the People made mention of Defendant’s continuing to speak after her arrest. I further note that, on resumption of cross-examination, Officer Volpe definitively attributed the statements “I’m a fucking cop,” “why are you pulling me over,” and “I don’t care who you are” to the “few moments” when Defendant was at his car window, whereas he could state only that Defendant made the statements “I don’t have to listen to you,” “I’m a cop,” and “You don’t have enough time on the job to tell me what to do” at some unspecified time “after the initial stop.” He also then testified that he could not say whether these statements were made before or after some questions were asked, and that Defendant made the statement “I’m a Nassau County police officer and I don’t have to show you anything” at some unspecified time after he had taken her identification. I thus conclude that Defendant made these latter statements after Defendant was escorted away from Officer Volpe’s car, at unspecified times and under circumstances the People

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declined to develop. I must therefore also conclude that the People have failed to meet their burden (*People v. Anderson, supra*; see also *People v. Alls*, 83 NY2d 94, 608 NYS2d 139 [1993]; *People v. Colon, supra*; cf. *People v. Morales*, 281 AD2d 182, 721 NYS2d 526 [1st Dept 2001]) with respect to the statements "I don't have to listen to you, I'm a cop," "you don't have enough time on the job to be telling me what to do," and " I am a Nassau County Police Officer and I don't have to show you anything" and hereby suppress them.

This constitutes the decision and order of the court.

So Ordered:



DISTRICT COURT JUDGE

Dated: October 20, 2014

CC: Honorable Kathleen Rice, District Attorney
Law Offices of Frederick K. Brewington

STK:blm