

2 A.D.3d 743, 861 N.Y.S.2d 359, 2008 N.Y. Slip Op. 05733

Supreme Court, Appellate Division, Second Department, New York.

The PEOPLE, etc., respondent,

v.

Christina SANABRIA, appellant.

June 17, 2008.

Background: Defendant was convicted in the County Court, Dutchess County, Dolan, J., of first degree assault and second degree assault, and she appealed.

Holdings: The Supreme Court, Appellate Division, held that:

(1) defendant did not preserve for appellate review her challenge to sufficiency of her plea allocution, and

(2) statement by interrogating officers that Child Protective Services would have to remove defendant's son from her house did not render her confession involuntary.

Affirmed.

West Headnotes

[1] Headnote Citing References KeyCite Citing References for this Headnote

Key Symbol110 Criminal Law

Key Symbol110XXIV Review

Key Symbol110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

Key Symbol110XXIV(E)1 In General

Key Symbol110k1044 Motion Presenting Objection

Key Symbol110k1044.1 In General; Necessity of Motion

Key Symbol110k1044.1(2) k. Preliminary Proceedings; Indictment, Information, or Complaint. Most Cited Cases

Defendant did not preserve for appellate review her challenge to sufficiency of her plea allocution, where defendant did not move to withdraw her plea, and her recitation of facts during her allocution did not cast significant doubt on her guilt or otherwise call into question voluntariness of her plea.

[2] Headnote Citing References KeyCite Citing References for this Headnote

Key Symbol110 Criminal Law

Key Symbol110XXXI Counsel

Key Symbol110XXXI(C) Adequacy of Representation

Key Symbol110XXXI(C)2 Particular Cases and Issues

Key Symbol110k1890 k. In General. Most Cited Cases

Defendant is not denied effective assistance of trial counsel merely because counsel does not make motion or argument that has little or no chance of success. U.S.C.A. Const.Amend. 6.

[3] Headnote Citing References KeyCite Citing References for this Headnote

Key Symbol110 Criminal Law

Key Symbol110XVII Evidence

Key Symbol110XVII(T) Confessions

Key Symbol110k523 k. Deception or Promises of Secrecy. Most Cited Cases

In interrogating suspect, police may employ stratagems including misrepresentations, provided only that deception is not so fundamentally unfair as to deny due process or raise danger that it will induce false confession. U.S.C.A. Const.Amend. 14.

[4] Headnote Citing References KeyCite Citing References for this Headnote

Key Symbol92 Constitutional Law

Key Symbol92XXVII Due Process

Key Symbol92XXVII(H) Criminal Law

Key Symbol92XXVII(H)5 Evidence and Witnesses

Key Symbol92k4661 Statements, Confessions, and Admissions

Key Symbol92k4664 Circumstances Under Which Made; Interrogation

Key Symbol92k4664(2) k. Particular Cases. Most Cited Cases

Key Symbol110 Criminal Law Headnote Citing References KeyCite Citing References for this Headnote

Key Symbol110XVII Evidence

Key Symbol110XVII(T) Confessions

Key Symbol110k522 Threats and Fear

Key Symbol110k522(1) k. In General. Most Cited Cases

Key Symbol110 Criminal Law Headnote Citing References KeyCite Citing References for this Headnote

Key Symbol110XVII Evidence

Key Symbol110XVII(T) Confessions

Key Symbol110k523 k. Deception or Promises of Secrecy. Most Cited Cases

Statement by interrogating officers that Child Protective Services would have to remove defendant's son from her house unless they could determine exactly what happened to her infant daughter was not untrue or so fundamentally unfair as to deny defendant due process or raise danger that she would falsely confess, and thus did not render defendant's confession involuntary, where defendant was in custody for grievously abusing her daughter, and Child Protective Services already had obtained from Family Court order of protection directing defendant to stay away from her home and her children. U.S.C.A. Const.Amend. 14.

\*359 Bruce A. Petito, Poughkeepsie, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Joan H. McCarthy of counsel), for respondent.

STEVEN W. FISHER, J.P., EDWARD D. CARNI, WILLIAM E. McCARTHY, and ARIEL E. BELEN, JJ.

\*360 Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered June 15, 2007, convicting her of assault in the first degree and assault in the second degree (two counts), upon her plea of guilty, and imposing sentence. The appeal brings up for review the denial, without a hearing, of that branch of the defendant's omnibus motion which was to suppress her statements to law enforcement officials.

ORDERED that the judgment is affirmed.

[1] Headnote Citing References The defendant pleaded guilty to assault charges in connection with the multiple, extensive, and disfiguring injuries she inflicted on her infant daughter beginning when the child was only three months old. The defendant's current challenge to the sufficiency of her plea allocution is not preserved for appellate review because she did not move to withdraw her plea and because her recitation of the facts during her allocution did not cast significant doubt on her guilt or otherwise call into question the voluntariness of her plea ( see People v. Lopez, 71 N.Y.2d 662, 666, 529 N.Y.S.2d 465, 525 N.E.2d 5; People v. Elcine, 43 A.D.3d 1176, 1177, 843 N.Y.S.2d 343; People v. Nash, 38 A.D.3d 684, 832 N.Y.S.2d

593; *People v. Burgess*, 21 A.D.3d 904, 800 N.Y.S.2d 516). In any event, the facts admitted in the allocution were sufficient to support the defendant's guilty plea ( see *People v. Seeber*, 4 N.Y.3d 780, 793 N.Y.S.2d 826, 826 N.E.2d 797).

The defendant's contention that she was denied the effective assistance of counsel is without merit. In moving to suppress the defendant's statements to the police, defense counsel argued that suppression was required both because the defendant's right to counsel had indelibly attached when the Family Court issued an order of protection against her, and because the police prevented the father of the defendant's child from communicating with or seeing the defendant before she made the statements. The County Court correctly denied the motion ( see *People v. Crimmins*, 64 N.Y.2d 1072, 1073, 489 N.Y.S.2d 879, 479 N.E.2d 224; *People v. Smith*, 62 N.Y.2d 306, 309, 476 N.Y.S.2d 797, 465 N.E.2d 336; *People v. Myers*, 17 A.D.3d 699, 700, 793 N.Y.S.2d 537), and properly did so without a hearing ( see CPL 710.60[3][a]; cf. *People v. Marquez*, 246 A.D.2d 330, 331, 667 N.Y.S.2d 359). The defendant nevertheless argues that counsel was ineffective for failing to move to suppress the statements on the ground that they were involuntary. Specifically, she cites information provided by the prosecution that, before she made inculpatory statements, the interrogating officers told her that Child Protective Services would have to remove her son from her house unless they could determine exactly what happened to her infant daughter.

[2] Headnote Citing References[3] Headnote Citing References[4] Headnote Citing References “A defendant is not denied effective assistance of trial counsel merely because counsel does not make a motion or argument that has little or no chance of success” ( *People v. Stultz*, 2 N.Y.3d 277, 287, 778 N.Y.S.2d 431, 810 N.E.2d 883; see *People v. Caban*, 5 N.Y.3d 143, 152, 800 N.Y.S.2d 70, 833 N.E.2d 213; *People v. Georgiou*, 38 A.D.3d 155, 161, 828 N.Y.S.2d 541). In interrogating a suspect, police may employ stratagems including misrepresentations, provided only that the deception is not so fundamentally unfair as to deny due process or raise the danger that it will induce a false confession ( see *People v. Tarsia*, 50 N.Y.2d 1, 11, 427 N.Y.S.2d 944, 405 N.E.2d 188; *People v. Sobchik*, 228 A.D.2d 800, 802, 644 N.Y.S.2d 370). Here, the statement by the interrogating officers that Child Protective Services would have to remove her son from her house unless they could determine exactly what happened to the infant was not untrue,\*361 much less so fundamentally unfair as to deny the defendant due process or raise the danger that she would falsely confess. The defendant was in custody for grievously abusing her infant daughter and Child Protective Services already had obtained from the Family Court an order of protection directing the defendant to stay away from her home and her children. Accordingly, any motion to suppress the statements on the ground that they were involuntary owing to the comments of the police would have had little or no chance of success, and therefore, counsel's failure to make such a motion did not render his otherwise fully competent representation constitutionally deficient.

The sentence imposed was not excessive ( see People v. Suitte, 90 A.D.2d 80, 455 N.Y.S.2d 675).

N.Y.A.D. 2 Dept.,2008.

People v. Sanabria

52 A.D.3d 743, 861 N.Y.S.2d 359, 2008 N.Y. Slip Op. 05733

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