

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - October 21, 2010

A. GAIL PRUDENTI, P.J.
JOSEPH COVELLO
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2010-00622

DECISION & ORDER

The People, etc., appellant,
v Alexis Caba and Lameek Stanton, respondents.

(Ind. No. 7084/08)

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Joyce Slevin of counsel), for appellant.

Edwin Ira Schulman, Kew Gardens, N.Y., for respondents.

Appeal by the People from an order of the Supreme Court, Kings County (Ingram, J.), dated December 14, 2009, which, after a hearing, granted those branches of the defendants' omnibus motions which were to suppress physical evidence.

ORDERED that the order is reversed, on the law, those branches of the defendants' omnibus motions which were to suppress physical evidence are denied, and the matter is remitted to the Supreme Court, Kings County, for further proceedings on the indictment.

The Supreme Court improperly granted those branches of the defendants' omnibus motions which were to suppress physical evidence on the ground that the police officers did not have probable cause to pursue and arrest them. Contrary to the Supreme Court's determination, once the police officers witnessed the defendants trespassing into a park owned and operated by the City of New York, the entrance of which had a posted sign indicating that the park closed several hours earlier at dusk, they had probable cause to issue them summonses for committing a violation and/or arrest them for misdemeanors (*see* 56 RCNY 1-03[a][3]; 1-07[a], [c]). The officers were thus entitled to pursue and arrest the defendants when they fled after trespassing into the park in the officers' presence (*see* CPL 140.10[1][a]; *People v Canty*, 55 AD3d 330; *People v Simms*, 25 AD3d

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425). Since the pursuit was justified, the defendants' abandonment of weapons during the pursuit was not precipitated by any illegal police conduct (*see People v Martinez*, 80 NY2d 444, 448-449; *People v Shippy*, 53 AD3d 590; *People v Woods*, 281 AD2d 570, *affd* 98 NY2d 627; *see also People v Ramirez-Portoreal*, 88 NY2d 99, 110). Consequently, the hearing court erred in granting those branches of the defendants' omnibus motions which were to suppress the weapons.

PRUDENTI, P.J., COVELLO, FLORIO and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court