

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

D32466
N/kmb

_____AD3d_____

Submitted - September 16, 2011

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2010-01950
2010-04044

DECISION & ORDER

The People, etc., respondent,
v Mark Hassan, appellant.

(Ind. Nos. 12227/98, 1348/00)

Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Merri Turk Lasky of counsel; Andrew Dykens on the brief), for respondent.

Appeals by the defendant from two judgments of the Supreme Court, Queens County (Griffin, J.), both rendered October 13, 2009, convicting him of criminal sale of a controlled substance in the fifth degree under Indictment No. 12227/98, and bail jumping in the first degree under Indictment No. 1348/00, upon his pleas of guilty, and imposing sentences. The appeal from the judgment rendered under Indictment No. 12227/98 brings up for review the denial (Blumenfeld, J.), after a hearing (O'Dwyer, J.H.O.), of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgments are affirmed.

Contrary to the People's contention, the defendant's waiver of his right to appeal was not valid (*see People v Monsuri*, 83 AD3d 870, *lv denied* 17 NY3d 808; *People v Bradshaw*, 76 AD3d 566, 569, *lv granted* 15 NY3d 896) and, therefore, the purported waiver does not bar review of the defendant's claim.

Nevertheless, following the pretrial *Mapp* hearing (*see Mapp v Ohio*, 367 US 643),

October 4, 2011

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the hearing court properly denied that branch of the defendant's omnibus motion which was to suppress physical evidence. Under the fellow officer rule, if an arresting officer lacks personal knowledge sufficient to establish probable cause, the arrest will be lawful if the officer acts upon the direction of, or as a result of, communication with a superior or fellow officer or another police department, provided that the police as a whole were in possession of information sufficient to constitute probable cause to make the arrest (*see People v Ramirez-Portoreal*, 88 NY2d 99, 113; *People v Berrouet*, 84 AD3d 1392). Here, the hearing court properly determined that probable cause existed for the defendant's arrest based on the information obtained by the arresting officer from a fellow police officer during a "buy and bust" operation.

SKELOS, J.P., DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court