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

D33220
Y/prt

_____AD3d_____ Argued - November 22, 2011

WILLIAM F. MASTRO, A.P.J.
L. PRISCILLA HALL
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2007-10085 DECISION & ORDER

The People, etc., respondent,
v Isan Contant, appellant.

(Ind. No. 06-00362)

John R. Lewis, Sleepy Hollow, N.Y., for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Itamar J. Yeger of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Kelly, J.), rendered October 3, 2007, convicting him of criminal possession of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

According to the evidence adduced at a suppression hearing, the defendant was a passenger in a vehicle that was stopped for violating several provisions of the Vehicle and Traffic Law. Based on a state trooper's hearing testimony, the County Court found that the trooper, upon approaching the vehicle, detected the strong odor of marijuana emanating from the vehicle. The driver, who failed a field sobriety test, admitted that he and the occupants of the vehicle had smoked marijuana earlier that night. After the occupants had been removed from the vehicle, the trooper observed a bulge in the defendant's groin area. The trooper lifted the defendant's shirt, unbuckled his pants, observed a clear plastic bag, reached into his underwear, and retrieved the plastic bag, which contained cocaine and marijuana.

Contrary to the defendant's contention, the trooper was not limited to conducting a protective pat-down search of the defendant for a weapon once he was removed from the vehicle. The trooper's detection of the odor of marijuana emanating from the vehicle, the driver's failed sobriety test, and the driver's statement that the occupants had smoked marijuana earlier in the night provided probable cause to search the defendant's person for drugs (*see People v Black*, 59 AD3d 1050, 1051; *People v Badger*, 52 AD3d 231, 232; *People v Feili*, 27 AD3d 318, 319; *People v Turchio*, 244 AD2d 366, 367; *People v Chestnut*, 43 AD2d 260, 261-262, *affd* 36 NY2d 971), including the bulge in his groin area (*see People v Placek*, 58 AD3d 538, 539; *People v Butler*, 27 AD3d 365, 369; *People v Brown*, 24 AD3d 565, 566). Accordingly, the County Court properly denied that branch of the defendant's omnibus motion which was to suppress physical evidence.

MASTRO, A.P.J., HALL, SGROI and COHEN, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court