

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM PART K-12 QUEENS COUNTY
125-01 QUEENS BOULEVARD
KEW GARDENS, NY 11415

P R E S E N T :

HONORABLE JOSEPH ANTHONY GROSSO
ACTING JUSTICE

THE PEOPLE OF THE STATE OF NEW YORK Ind. No. N10344/03

- against -

Motion To Suppress
Physical Evidence and
Identification

RASHEEM STEPHANS AND GLEN THOMAS,

Defendant

Submitted

On the papers submitted

Nathaniel Welkes, Esq.
For the defendant Thomas

Warren Silverman, Esq.
For the defendant Stephens

Hon. Richard A. Brown
District Attorney, Queens
County, by:

Kimberly Nielsen, Esq.
Opposed

Upon the foregoing papers, defendants motions to suppress
physical evidence and identification testimony are denied in
accordance with the attached memorandum.

JOSEPH ANTHONY GROSSO
Acting J.S.C.

Date: December 3, 2003

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM : PART K-12

THE PEOPLE OF THE STATE OF NEW YORK

BY: GROSSO, J.

-against-

DATE: December 3, 2003

Ind. No. N10344/03

RASHEEM STEPHANS AND GLEN THOMAS,

Defendant

On September 24 and 25, 2003, I conducted a Mapp/Gethers hearing. The People called two witnesses, Detective Michael Monahan and Detective Joseph Sala. Both detectives testified in a candid and forthright manner and I credit their testimony. From all the credible evidence, I find and conclude as follows:

Detective Monahan is employed by the New York City Narcotics Division and has so been assigned for the past six years. On December 28, 2002, at approximately 9:30 a.m. he was assigned as the arresting officer in a chase car, backing an undercover officer in a "buy and bust" operation. He had worked with this team a dozen times before this incident. At approximately 9:30 a.m., he received a communication from the "ghost" undercover who had the primary undercover under observation. The "ghost" undercover communicated to this detective that the primary undercover was in front of 85-02 Rockaway Bloulevard, and that the undercover was in a conversation with two males.

The "ghost" undercover gave a description of the two individuals to whom the undercover was talking. One was described as a male black, wearing a black jacket, a black hat and a yellow or mustard colored sweater. The other was described as a male black wearing a black jacket with a "black hoodie".

The next communication this detective received from the "ghost" undercover was that all three subjects went into 85-02 Rockaway Boulevard. He received another communication, from the "ghost", about a minute later in which the undercover gave a "positive buy sign". Approximately one to two minutes had transpired between the transmissions. Finally, the undercover transmitted to the team member that there was a "positive buy" and gave a description of the subjects once again. The ghost gave another transmission that the two individuals were walking towards 86th Street. At this time, the team leader moved into the area where the buy occurred along with the rest of the field team. This area is a housing development on one corner and a row of stores on the other corner. As detective Monahan exited his vehicle, he noticed Lieutenant Henig and Detective Venturino directly in front of him. He observed the individual with the yellow shirt walk into the bodega on the corner. The detective followed him and observed "the one individual standing at the counter drop a bag of crack, on the floor and he just turned around". The detective stated that the person who dropped the crack is the defendant Glen Thomas. He described the bag as a little zip lock bag of crack. At this point he immediately grabbed the defendant and put him into handcuffs. He recovered money from the defendant's right hand, later determined to be the prerecorded by money used in this operation. He vouchered the zip lock bag. When the detective walked outside, he noticed another male in the custody of members of the field team. This was the male black that wore the black jacket and black hoodie and who he now identified as the defendant Rasheem Stephans.

Shortly thereafter, Detective Monahan received a communication from the undercover that those were the "two males he dealt with in 85-02"Rockaway Boulevard. After this communication, he placed the second individual in handcuffs and searched him to determine whether he possessed any weapons. \$125.00 was recovered from his pocket. At the precinct, a more thorough search was conducted by Lieutenant McGuire and nine additional bags were recovered from the defendant Stephans. From Detective Sala, he received an additional bag which he was told was recovered from the defendant Thomas's sock.

It appears that the District Attorney's write up and the felony complaint that two bags containing crack/cocaine were recovered from the defendant, Thomas' sock. This contravenes Detective Monahan's testimony that he observed one bag of crack cocaine dropped inside the store.

Detective Sala, a 17 year veteran of the police force is a narcotics investigator. On December 28, 2002, he was working with the prisoner van. His assignment was to guard the van. He placed the two defendants in the van and transported them to the precinct. At approximately 12:10 p.m. that day, he received an assignment to "strip search" the prisoners. He began with the defendant, Rasheem Stephans. The detective gave a step by step process of how a strip search occurs. The defendant was asked to remove an article of clothing and then he would check all pockets of that clothing. After each article is removed and checked, it is placed into a pile. The defendant once naked was asked to grab his buttocks. The Detective standing behind the defendant, observed a piece of plastic "all the way up the (defendant's) crack". He stated further it looked like a clear piece of plastic.

The detective told the defendant to take out the object. When the defendant hesitated, the detective became more emphatic and the defendant complied. A clear plastic bag containing eight bags of cocaine was recovered and vouchered.

The issues presented in this case are unique because different legal theories apply to each defendant.

As to defendant Thomas, the motion to suppress identification testimony and physical evidence is denied. Detective Monahan received a radio communication from the "ghost" undercover which described this defendant as having participated in the alleged drug transaction. There was an almost immediate observation of Mr. Thomas by the detective near the situs of the alleged transaction. The detective, accordingly had a legitimate and sufficient basis to pursue and detain Mr. Thomas. Having found the pursuit and detention of Mr. Thomas proper, the recovery of one of the bags of crack cocaine from his person or the ground is proper either under a theory of abandoned property, (People v. Boodle,, 47 NY2d 398) or proper as incident to arrest. The identification of Mr. Thomas by the undercover officer was close in time and geographic distance to the crime situs and was based on his lawful detention for that purpose. Accordingly, this is a proper confirmatory identification(People v. Gethers, 86 NY2d 159). The confirmatory identification provided probable cause for the arrest making any contraband or crime evidence properly recovered as incident to that arrest.

As to defendant Stephans, the fellow officer rule (See, People v. Parris, 83 NY2d 342) is at issue. The People called no witness to testify directly as to how Mr. Stephans came to be detained. From the facts adduced, it is clear that a narcotics field team was on this specific "set". Clearly, Detective Monahan observed other field team members at or near the site where each defendant was apprehended as he commenced his pursuit of Mr. Thomas. One can infer from the convergence of this field team at the specific location that all members of the team had received communications from the "ghost" or the undercover directly or indirectly from other team members. I hold that the aggregate of all the information known to the police at the time Mr. Stevens was detained justified that detention. (See, People v. Ketcham, 93 NY2d 416) (People v. Davis, 237 AD2d 456) Mr. Stephans identification by the undercover officer was a proper confirmatory identification (See, Gethers, supra). The property recovered from Mr. Stephans at the scene of his arrest was proper as a search incident to the lawful arrest.

The search of Mr. Stephans at the precinct calls into question the legitimacy of strip searches where there has been a felony arrest. (I find as a matter of fact that the precinct search was a strip search rather than body cavity search since the contraband was removed from the body cavity by the defendant himself. The removal of the object, plainly visible, by the defendant following a police command to do so does not transform this event into a "body cavity" search).

The current state of law distinguishes between strip searches for felony arrests and strip searches for misdemeanor arrests. Strip searches where the defendant has been arrested for a misdemeanor or lower grand offense are deemed reasonable under the Fourth Amendment if and only if additional factors are present. These factors include "the defendant's excessive nervousness, unusual conduct, information showing pertinent propensities, informant's tips, loose-fitting or bulky clothing, an itinerary suggestive of wrongdoing, incriminating matter discovered during a less intrusive search, lack of employment, indications of drug addiction, information derived from others arrested or searched contemporaneously, and evasive or contradictory answers to questions." (See, People v. Kelley, 306 AD2d. 699).

I have found no "bright line law" which holds that strip searches are reasonable in all felony arrest cases. Thus, I must examine whether a strip search is reasonable in the context of a

felony arrest for a street level drug transaction, a buy and bust case. I hold that such searches are reasonable and permissible.

Over the past twenty years following McRay, (People v. McRay, 51 NY2d 594) and its progeny, trial level and appellate courts have recognized that those who choose to be involved in drug trafficking have become more sophisticated in the packaging and in the method of exchange of drugs in order to avoid detention by the police or to defeat a "probable cause" finding by a trial level or appellate court. Likewise, contraband that was once only concealed in a person's pocket is now routinely secreted in a person's undergarments or in the most private and intimate body cavity in order to avoid detection. It is more common and more frequent in reviewing grand jury minutes or having testimony at suppression hearings to learn that the illicit contraband or fruits of the transaction were recovered from undergarments or body cavities. Accordingly, I hold that a strip search following an arrest based on probable cause for a street level felony drug transaction is reasonable and proper. The drugs recovered from Stephans at the precinct are, therefore, admissible.

Although not required for my determination, strip searches may be necessary and reasonable as legitimate security and public safety measure. A person arrested for a crime is held at the precinct at the police central booking holding cells prior to arraignment. During this period, the arrestee comes into contact with other arrestees. Typically an arrestee is not handcuffed during arraignment. The possession of an undetected weapon or the possible ingestion of secreted narcotics during this period could threaten the safety of the arrestee and other persons with whom he/she has contact.

Accordingly, and the reasons stated herein, the motions to suppress is denied.

So ordered.

JOSEPH ANTHONY GROSSO
Acting J.S.C.

Date: December 3, 2003