

**SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART K-8 - QUEENS COUNTY
125-01 Queens Boulevard
Kew Gardens, New York 11415**

P R E S E N T:

HON. ROBERT CHARLES KOHM

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No: N10946-02

- against -

Motion to suppress physical
Evidence and statements.

SEAN POWELL

Defendant,

The following papers numbered
1 to 4 submitted on this motion.

David Cohen, Esq.
For the Motion

Richard A. Brown, Esq., D.A.

By: ADA E. Rivkin, Esq.
Opposed

Notice of Motion and Affidavits Annexed.....	1 - 2
Answering and Reply Affidavits.....	3 - 4
Exhibits.....	
Minutes.....	

Upon the foregoing papers and after a hearing, the defendant's application to suppress physical evidence and statements is denied. See the attached memorandum decision dated May 8, 2003.

Dated: Kew Gardens, New York
May 8, 2003

J. S. C.

**SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART K-8, QUEENS COUNTY
125-01 QUEENS BLVD., KEW GARDENS, N.Y. 11415**

HON. ROBERT CHARLES KOHM

Justice

THE PEOPLE OF THE STATE OF NEW YORK

Indict. No. N10946-02

Motion: to suppress physical
Evidence and statements

- against-

Hearing: April 3, 2003

SEAN POWELL

Defendant

_____The defendant moves to suppress physical evidence seized by the police from the trunk of a Ford Taurus which was searched at the precinct following the defendant's arrest. He also moves to suppress statements he made at the precinct to Police Officer Michael Clark. The People oppose the applications in all respects.

This Court held a suppression hearing and makes the following findings of fact and conclusions of law: the police were conducting a surveillance operation on October 10, 2002 in the vicinity of 243rd Street and Merrick Blvd., in the County of Queens, having received information from an anonymous caller of drug dealing involving a gray Ford Taurus bearing New York license plate number AEW9478. At approximately 6:40 PM the police observed the Ford Taurus parked at the curb and saw the defendant, a male black, exit a white Buick and approach the trunk of the Ford Taurus. The defendant opened the trunk and was further observed from a distance of approximately four feet handling a large amount of U.S. currency and numerous plastic baggies containing a rock-like substance which was situated inside the trunk of the vehicle. The defendant closed the trunk and left the area in the Buick and was arrested by members of the backup team, who searched and transported him to the Ford Taurus where the keys which were in the defendant's possession opened the door, ignition and trunk of said vehicle. Although the police were able to gain access to the interior of the Ford Taurus, no search of the vehicle was conducted at that time and place.

The Ford Taurus was seized by the police and removed to the precinct where the trunk and interior were searched. Inside the trunk the police discovered contraband which the defendant now seeks to suppress. He also made an inculpatory statement to the police during the taking of pedigree.

Concerning the issue of the defendant's standing raised by the People in their Memorandum of Law dated April 30, 2003, that issue was previously determined in the defendant's favor in a decision of Judge Griffin dated January 13, 2003. He ordered a Mapp

hearing regarding the “property recovered from the defendant’s person, from inside a 2002 Buick Regal automobile and from inside a 1988 Ford Taurus automobile”. As a consequence this Court need not pass upon the defendant’s standing to move to suppress the physical evidence and statements he made to the police. In any event, the evidence adduced at the hearing established the defendant’s standing in that he had a legitimate privacy interest in the Ford Taurus seized by the police.

Notwithstanding this determination, the defendant’s motion to suppress physical evidence must be denied. The police had probable cause to arrest the defendant having observed him handling money and drugs in the trunk of the Ford Taurus in question. They also had probable cause to believe that the Ford Taurus would contain further evidence relating to that crime. The fact that the search of the car was conducted after the defendant was taken to the precinct and the vehicle was impounded does not compel a different result. The justifications for a warrantless search conducted upon probable cause pursuant to the automobile exception so not dissipate merely because the vehicle has been placed in the control of the police (*People v Milerson*, 51 NY2d 919, 921), and the exception is equally applicable whether the search is conducted at the time and place where the automobile was stopped or whether, instead, the vehicle is impounded and searched after removal to the police station (*People v Orlando*, 56 NY2d 441, 446). Here, where the search was reasonably close in time and place to the point of arrest, this Court concludes that there was no requirement that the police further delay the search to obtain a warrant (*People v Milerson, supra. at 921*).

_____ Furthermore, this Court’s conclusion that the search of the trunk of the Taurus was permissible makes it unnecessary to address the defendant’s contention that the People’s proof at the hearing was insufficient to establish that the search was conducted pursuant to standard police procedures authorizing an inventory search of impounded vehicles.

Concerning the defendant’s statement, the evidence at the hearing establishes that said statement was voluntarily made and was not the result of police interrogation or it’s functional equivalent. Accordingly, the defendant’s application to suppress his station house statement is also denied.

This constitutes the Order and Decision of the Court.

The Clerk of the Court is directed to forward a copy of this Order and Decision to Defense Counsel and the District Attorney’s Office.

Dated: Kew Gardens, New York
May 8, 2003

ROBERT CHARLES KOHM, J.S.C.

