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defendants Turner, Boston and Martinez. The motion to suppress identification is denied as to defendants Turner, Boston, Martinez and Lopez; the motion to suppress tangible evidence is denied in part and granted in part as to defendants Turner, Martinez and Lopez; and the motion to suppress statements is denied as to defendants Turner and Boston for the reasons set forth below:

Motion to Suppress for Lack of Probable Cause

It is the defense's contention that the New York City Police Dept. (N.Y.P.D.) Officers did not have probable cause to arrest these defendants and did not have reasonable suspicion to justify stopping the defendants in Nassau County, some fifty-five minutes after the initial incident. The defendant, Martinez and the defendants argue that their mere presence in the vehicle was insufficient to establish that the police had probable cause to believe the defendants shared the intent of the actual culprit.

The People oppose and argue that this was a proper stop based upon reasonable suspicion of criminal activity derived from a number of radio communications with information about the individuals involved in a robbery. The People dispute the defense's contention that the officer was not in his geographical area of employment and cite CPL§140.25(5)(b) to support their contention that these N.Y.P.D. Officers did not act improperly in following and stopping these defendants in Nassau County as they fled from the Queens incident. The People also argue that the arrests of defendant Martinez and other defendants were proper

based upon the matching information and the complainant's identification. The People argue the issue of mere presence is available to the defense at trial.

The defense in reply argue CPL§140.50 bars the stop and contends that the People err in their contention that the stop was justified as temporary questioning pursuant to CPL§140.25(5)(b).

With respect to the disputed issues, the Statutory law is clear as to CPL§140.50(1) and CPL§140.25(5)(b):

CPL§140.50(1) states:

"a police officer may stop a person in a public place located within the geographical area of such officer's employment when he reasonable suspects that such person is committing, has committed or is about to commit [a crime] and may demand of him his name, address and an explanation of his conduct;"

and CPL§140.25(5)(b) states:

"The 'geographical area' of employment of any peace officer employed as such by an agency of a county, city, town or village consists of (i) such county, town or village, as the case may be, and (ii) any other place where he is, at a particular time, acting in the course of his particular duties or

employment "

Also the Penal Law provides in CPL§70.10(2) that:

"'Reasonable cause to believe that a person has committed an offense' exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay."

Furthermore, Criminal Procedure Law §§140.05, 140.10(1) sets forth the law in this area. CPL§140.05 states:

"A person who has committed or is believed to have committed an offense and who is at liberty within the state may, under circumstances prescribed in this article, be arrested for such offense although no warrant of arrest therefor has been issued and although no criminal action therefor has yet been commenced in any criminal court."

and CPL§140.10(1) provides:

"1. Subject to the provisions of subdivision two, a police officer may arrest a person for:

(a) Any offense when he has reasonable cause to believe that such person has committed such offense in his presence and

(b) A crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence otherwise."

Finally, this Court notes that the Court of Appeals in People v DeBour, 40 N.Y.2d 210, set forth the gradations and considerations where inquiring into the propriety of police conduct by weighing the inference it entails against the precipitating and attending conditions. The DeBour Court said at p.223:

"The minimal intrusion of approaching to request information is permissible when there is some objective credible reason for that interference not necessarily indicative of criminality...the next degree. the common-law right to inquire is activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion in that a policeman is entitled to interfere with a citizen to the extent necessary to gain

explanatory information, but short of forcible seizure....where a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor, the CPL. authorized a forcible stop and detention of that person."

See also People v Sobotker, 43 NY2d 559 (1978).

In the instant matter, Officer Brasch and two other plainclothes officers were in an unmarked car in Queens on May 8, 1998, when they received a radio run at 2:15 p.m. - "a female had just been robbed on approximately 131st [S]treet [in Queens] and there was a black Dodge Plymouth Shadow with New Jersey plate Number FME11T driving towards East Channel Drive." (T-p.9,84). At 2:40, Brasch and the other officers received second radio communication stating "that four individuals - two male blacks (one with dread locks and a white t-shirt), one male Hispanic and one female Hispanic" were in the Shadow - (T-p-11,25,28,57,83,84,86,108).

They relocated to the corner of Beach Channel Drive and Mott Avenue. About five minutes later, at 2:45, a black Plymouth Shadow with a New jersey plate number FHE11T passed their car and stopped at the light. Brasch's car followed the Shadow into Nassau County and stopped the vehicle using sirens and lights. The individuals were requested to exit the vehicle, placed behind the vehicle and were held for investigation.

After 2:50 p.m. the defendants were formally arrested following an identification of the vehicle's occupants.

This Court finds the circumstances herein did not demonstrate any violation of defendant's constitutional rights. Note: People v Finlayson, 76 A.D.2d 670 (1980) There was sufficient reasonable suspicion as set forth in the statutes and case law to justify the stop and actions taken. See People v Henry, 150 AD2d 268 (1st Dept. 1987). This court finds that the crossing of county lines in pursuit of possible suspects of a Queens robbery did not transgress the statutory law and applicable legal standards. Clearly, the stop and inquiry were warranted by the detailed information transmitted from the complainant to the officers. The stop was proper and reasonable and not barred by CPL§140.50 nor governed by CPL§140.25(5)(b). CPL§140.50 does not bar the detention of the suspects where, as here, the Police possess reasonable suspicion of criminality and detained the suspects for five minutes without displaying weapons, as they promptly investigated this matter.

Motion to Suppress Identification:

The defense moves to suppress the show-up identification herein and contends the defendants were subjected to an overly suggestive and clearly tainted show-up identification procedure where the complainant viewed the defendants in the midst of five plainclothes police officers. The defense contends that the complainant's alleged "That's them" was insufficient proof of the

fairness and due process of the procedures utilized. Defendant Martinez argues that the identification merely confirmed who was in the car but the complainant did not tell police enough for probable cause for the arrest. They contend that the identification should be suppressed as tainted fruit of the illegal stop pursuant to Wong Sun v U.S., 371 US 471 (1963).

The People contend that the positive show-up identification of all the defendants emanated from the complainant and was prompt and proper.

The law is well established that the exclusionary rule established in U.S. v Wade, 388 U.S. 218, Gilbert v California, 388 U.S. 263 and Stovall v Denno, 388 U.S. 293, is applicable to procedures "where the confrontation conducted was so unnecessarily suggestive and conducive to irreparable mistaken identification that (the defendant) was denied due process of law." (Stovall v Denno, Supra). To invoke this remedy. the Courts have required the defendant to establish that the pre-trial confrontations were both (1) "impermissibly suggestive" and (2) "conducive to irreparable mistaken identifications" Neil v Bigger, 409 U.S. 188, U.S. v Evans, 484 F2d 178. In this application of this test, Courts at the state level have determined admissibility by the fairness of procedure criteria, while courts at the federal level have used the criteria of the reliability of the identification and the totality of circumstances.

With respect to show-up identification procedures, the Court

of Appeals have held that show-ups, although inherently suggestive, are proper and allowed if exigent and reliable in that suspects are captured at or near the crime scene and can be viewed by the witness promptly and immediately after the crime. Note: People v Reilly, 70 NY2d 523 (1987); People v Mitchell, 185 A.D.2d 249 (2nd Dept., 1992).

In this matter. Police Officers Tenety and Kennedy received radio communication that Officer Brasch had possible suspects at approximately 2:40, approximately five miles away from the area of the criminal incident. Officer Tenety and his partner transported Ms. Kerry Johnson and her father to the stop site. The officer told the complainant that "the 101 Precinct [officer] has a possible car stopped" and that "we're going to drive by the car slow[ly] and you just let me know if you recognize anybody." (T-pl5 65, 105, 108). The four defendants were standing with five police officers on the sidewalk when complainant had her eye-level show-up viewing. After the drive-by, the Officer reported to Officer Brasch that there was a positive identification and the complainant stated "That's everyone who was in the car." She also pointed to defendant Turner, who she had described as male black, 170 pounds, 6"0", 20 years old with dread locks and a white t-shirt, and said "That's him."

Under all the circumstances herein, the People have satisfied their burden of going forward to show the legality and propriety of the show-up identification procedure utilized

herein. While the defense has raised concerns about the vagueness of descriptions of all defendants except Turner, these concerns pertain to the weight, not the admissibility of the identification. The identification procedure was reliable since it was close in time and distance between the observation of the occupants of the vehicle and the commission of the crime while the witness was still fresh. Note: People v Johnson, 81 NY2d 828 (1993); People v Mitchell, supra. The credible testimony has established that the identifications were neither impermissible suggestive, tainted, nor unfair. This Court finds that defendant's constitutional rights were not violated.

Motion to Suppress Tangible Evidence

1. "Stop and Frisk"

The defense contends that the stop and frisk was conducted by the N.Y.P.D. officers who lacked authority to act in Nassau County based upon the definition of employment area, the defense believes that the Court must apply to CPL§140.50. The defense argues that the officers lacked the requisite information to justify the intrusion and seizure of property and contends that the property should be suppressed. The defense argue there was not reasonable suspicion to order the occupants out of the vehicle and to search each one.

The People oppose suppression and argue in opposition that the stop and frisk were proper. The People contend that the specificity of information, promptness in time and closeness in

space all support the validity of the stop of the vehicle and justify the safety frisk conducted of the occupants.

In Terry v Ohio, the Supreme Court held that where there is reasonable suspicion authorizing a forcible stop, the officers may conduct a pat down frisk for safety reasons.

The Statute in CPL§140.50(3) provides that:

"When upon stopping a person...a police officer...reasonably suspects he is in danger of physical injury, he may search such person for a deadly weapon or any instrument..."

In New York, the standard is that police action must be reasonably related in scope and intensity to facts as they are known and become known to officer. A car can be stopped if there is reasonable suspicion to believe that occupants have committed a crime See People v DeBour, supra; People v DeJesus, 92 A.D.2d 521; People v Finlayson, supra.

The Court of Appeals observed in People v DeBour, supra. at p.223:

"A corollary of the statutory rights to temporarily detain for questioning is the authority to frisk is the Officer reasonable suspects that he is in danger of physical injury by virtue of the detainee being armed. (CPL §140.50, sub.3)"

Also, the courts have recognized that in car situation in which police officers approach individuals seated in a car is

recognized as fraught with danger for the officer. The law, therefore, allows the officer, if given sufficient predicate for the approach, to open doors and order occupants out. See Pennsylvania v Mimms, 434 U.S. 106, Adams v Williams, 407 U.S. 143; People v David L., 56 NY2d 482.

In the instant, matter. the officers stopped the vehicle based on the specific information about the car, its occupants and the prior communications at 2:05 and 2:40. P.O. Brasch and P.O. Mazza had followed the vehicle for a half mile into Nassau County before pulling the vehicle over using the siren. Officer Brasch requested the driver show him a license and registration. The driver showed him his registration and insurance card (T-p.62,89). The officer had the defendants exit the vehicle and go to the rear of the vehicle. The officer testified that the defendants were not under arrest but were not free to leave. The frisk of the defendants were conducted. Brasch did not have his weapon displayed and has no recollection of his partner or the Sergeant having theirs drawn. No weapons were recovered from the defendants and defendant Turner was found in possession of twenty two dollars (\$22.00) in U.S. currency in his right pants pocket. This court concludes that there was sufficient reasonable suspicion, specific information and proper conduct to justify frisk of the defendants and the inevitable seizure of the currency after a search at the station house. This court finds the stop and frisk incident thereto did not violate the defendant's constitutional rights.

2. "Plain View Doctrine"

The defendants argue that the search of the vehicle was unreasonable and that there was no probable cause to seize the pocketbook, search the closed console and seize other items from the vehicle.

The People argue in opposition that the Plain View doctrine applies and the motion to suppress the pocketbook and its contents should be denied. The People argue that "the police were lawfully at the vantage point in which the items was seen, having a valid basis to stop the car. They had probable cause to believe that it was contraband or evidence of criminality even without knowing exactly what has been taken in the robbery." (Peo's Affirm p.3).

The law as to Plain View provides that property in plain view may be seized without a warrant if the officer views the property from a place at which he is legitimately entitled to be (Coolidge v New Hampshire, 403 U.S. 443 (1971)), his discovery of the property is inadvertent, (People v Jackson, 41 NY2d 146) and he immediately recognized the property as contraband or incriminatory evidence (People v Jenkins, 77AD 353; People v Richie, 77AD2d 667).

Under the federal law, police can make a warrantless seizure of any evidence or contraband they observe lying in open view if (1) their intrusion into the area where they see the object to be seized is valid, and (2) the incriminating nature of the evidence

or contraband is "immediately apparent" Horton v California, 496 U.S. 128 (1990), Texas v Brown, 460 U.S. 730 (1983), Coolidge v New Hampshire, supra. Federal law no longer requires the discovery be inadvertent and understands "immediately apparent" to mean officer has probable cause to believe. Note: Texas v Brown, supra.

Also, the law permits that where warrantless search of a car is permissible, it is of no constitutional consequence whether search is conducted where car is stopped or after removal to station house. See Texas v White, 423 U.S. 67; Chambers v Maroney, 399 U.S. 42, People v Orlando, 56 NY2d 441.

In this case, Officer Brasch saw a pocketbook with a broken strap adjacent to the female when he stopped the vehicle containing the defendants at 2:40. The pocketbook was between the console and passenger seat and was removed prior to 2:50. The officer returned to the vehicle and searched it discovering two business card holders with the complainants name on the cards therein, also removed prior to 2:50. While waiting for complainant, the officers seized the pocketbook, found the cards and cardholder as well as saw the keys and key chain. At 3:10 the complainant told Officer Brasch that she was walking home when she was grabbed from behind by a male who threw her to the ground, grabbed her bag and entered into a car which drove away.

Later at the 101 Precinct, the officer did a further search and found a key chain with keys and the name of the complainant. Officer Brasch spoke to the complainant at the station house

and had her identify the evidence.

In this matter, the intrusion upon the defendants were based upon reasonable suspicion to stop and detain the suspects. The pocketbook was in plain view near the female suspect. The viewing of same appears to have occurred during a valid stop but there is no record that the officer had any basis for believing that the pocketbook was incriminating evidence; nor was it immediately apparent since he had no knowledge that the pocketbook was proceeds of alleged robbery (T-p.37) nor did he have probable cause to search the vehicle. See Texas v Brown, *supra*; People v Smith, 59 NY2d 454; People v Johnson, 59 NY2d 1014; People v Gorkey, 6NY2d 309 cf. New York v Belton, 453 U.S. 454. Nor is it clear that the plain view sighting of the pocketbook which was closed and remained in the car after the occupants had exited, was inadvertent rather than anticipated. Note: People v Roth, 66NY2d 688. See generally People v Smith, 42 NY2d 961; People v Allende, 39 NY2d 474. This Court finds that the People's invocation of the Plain View Doctrine is not supported by the evidence and there was neither probable cause nor reasonable basis for belief that the property seized was evidence of criminality See People v Torres, 74 NY2d 224 (1989). Neither P.O. Tenety nor P.O. Brasch indicated that they mentioned a pocketbook in either of the two radio communications they had, nor have the People produced any 911 tapes indicating what if any information the arresting officers had at the time of the stop and seizure after plain view sighting of pocketbook.

It is further clear that the seizure of the cards and cardholders were seized without requisite information to justify the search made prior to the identification herein. The court notes that the finding of the keys and the subsequent seizure thereof was proper and inevitably would have been discovered during the inventory search subsequent to their arrests. See People v Sullivan, 29 NY2d 69.

This Court concludes that the seizure of the pocketbook, cards and cardholders were violative of the defendant's constitutional rights and not justified by the plain view doctrine. This court notes that the evidence is suppressed only as to the police testimony but this ruling does not bar the complainant testifying to her ownership, loss of as well as subsequent viewing and recovery of said property.

3. "Fruit of Poisonous Tree"

The defendants contend that the credit cards allegedly recovered from the cell should be suppressed as the illegal fruit of the poisonous tree.

In opposition the People argue that the credit cards were abandoned in the cell and the recovery thereof did not violate any defendant's constitutional rights.

The law is clear that the exclusionary rule will result in suppression of evidence illegally seized as well as evidence discovered through exploitation of illegality (i.e. fruit of poisonous tree). See Wong Son v U.S. 371 U.S. 471.

The courts also note that People bear burden of adducing

proof which must "reasonably beget the exclusive inference of the throwing away"--i.e. intentional relinquishment of a known right. See People v Howard, 50 NY2d 583. See generally People v Boodle, 47 NY2d 398; People v White, 92 AD2d 1033.

In this matter, on May 9, 1999, the three male defendants were placed in detention cells at the 101 Precinct while the female defendant was handcuffed to a chair. Officer Laura Amodeo was assigned inside and inspected cell area after all persons in the cell were taken to Central Booking. Prior to her search, the only persons in the cell were the three male defendants. The officer searched behind the seat therein and found five credit cards with the name Kerry A Johnson on each. Officer Amodeo did not process the cards for fingerprints but did voucher them, which consisted of Citibank card, Fordham U. Visa card, American Express card, CSF Bank Visa Card and Citibank Advantage card, as evidence.

This Court notes that the defendants were under arrest pursuant to the show up identification in the street by the vehicle. The evidence recovered from the cell had been abandoned and secreted at that location by wedging them in back of the seat. This recovery was not tainted by the prior intrusion and seizure of property from the vehicle. This was not the fruit of an illegal search or seizure but the recovery of incriminating evidence abandoned by the defendants. There is no constitutional violation herein but a calculated act by the defendants to relinquish and abandon the incriminating evidence.

Suppression of Statements

The defense has moved to suppress the statements allegedly made by the defendants Boston and Turner on the grounds that their constitutional rights were violated since they received no Miranda warnings prior to their utterances.

The People argue that the alleged statements made were not the result of custodial interrogatories by the police.

The Supreme Court in Miranda v Arizona, 384 U.S. 436, espoused the rule that the product of custodial interrogation by law enforcement officials is inadmissible unless, before the interrogation, the suspect is advised of his constitutional rights and voluntarily, knowingly and intelligently waives them.

Also, Criminal Procedure Law §60.45(2)(a) and (2)(b)(i) defines "involuntary" as:

"A confession, admission or other statement is "involuntarily made" by a defendant when it is obtained from him:

(a) by any person by the use of threatened use of physical force upon the defendant or another person, or by means of any other improper conduct or undue pressure which impaired the defendant's physical or mental condition to the extent of undermining his ability to make a choice whether or not to make a statement; or

(b) By a public servant engaged in law

enforcement activity or by a person then acting under his direction or in cooperating with him:

(i) by means of any promise or statement of fact, which promise or statement creates a substantial risk that the defendant might falsely incriminate himself"

In this case, the defendants were in custody but the record is silent as to whether they received Miranda warnings. Officer Brasch testified that he did not interrogate any of the defendants at the site of the stop at 2:30 p.m. on May 8, 1999. Defendant Boston allegedly stated that he didn't do anything and wanted to know when his line-up would be (T-p.20). Officer Brasch also stated that he spoke to defendant Turner's grandmother over the telephone in the 101 Precinct at 6:00 on May 8, 1999. The officer stated that he learned Turner's real name is Ernest Bostwick (T.p.21). The officer testified that when Turner was put back in the cell, he heard him tell defendant Boston, that "now they know my real name, they're going to know about the murder I did in North Carolina" (T-p.21).

This Court concludes that the statements allegedly made by defendants Boston and Turner were not the result of custodial interrogation in that the police officer asked no questions of them. Under these circumstances, the Court finds no violation of either defendant's constitutional rights. Accordingly, the motion to suppress as to these statements are denied.

ACCORDINGLY, for the reasons stated, this Court hereby orders and determines that the defense motions to suppress the arrest, show-up identification and statements, are denied. With respect to the motion to suppress tangible evidence, it is granted in part (pocketbook, cards and card holders) and denied in part (keys, key holders, credit cards and U.S. currency).

ORDER ENTERED ACCORDINGLY

The Clerk of the Court is directed to mail a copy of this decision and order to be entered thereon to the attorneys for the defendants and the People.

DANIEL LEWIS, JSC