

People v McCants

2006 NY Slip Op 30721(U)

September 5, 2006

Supreme Court, Nassau County

Docket Number: 0614N-06

Judge: Steven M. Jaeger

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT :

HON. STEVEN M. JAEGER
Acting Supreme Court Justice

INDICTMENT NO: 0614N-06

THE PEOPLE OF THE STATE OF NEW YORK

Hon. KATHLEEN M. RICE
District Attorney
Nassau County
262 Old Country Road
Mineola, New York 11501
By: Anthony Ciaccio & Jennine Mazzola
Assistant District Attorney

-against-

GERMAINE McCANTS,

Defendant.

Virginia Conroy, Esq.
Attorney for Defendant
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Rockville Centre, NY 11570

The Court, on its own motion, hereby vacates the decision and order dated August 24, 2006, and substitutes the following in its place.

AMENDED DECISION AFTER HEARING

An indictment has been filed against the defendant accusing him (inter alia) of the Class B felonies of Criminal Sale of a Controlled Substance in the Third Degree and Criminal Possession of a Controlled Substance in the Third Degree. It is alleged that on March 8, 2006, defendant possessed and sold cocaine to another.

Defendant, claiming to be aggrieved by an unlawful or improper acquisition of physical evidence, has moved to suppress evidence seized on March 8, 2006, by Officers Weis and Alonge, on the ground that it was obtained by means of an unlawful search and seizure within the meaning of CPL 710.20(I).

Defendant, claiming to be aggrieved by an unlawful or improper acquisition of evidence, has moved to suppress statements made by him on March 8, 2006, to Officer Weis and to Detective Holmes, on the ground that they were involuntarily made within the meaning of CPL 60.45.

Tangible evidence is admissible at trial in this State only if it was obtained by means of a lawful search and seizure from an area in which the defendant has a legitimate expectation of privacy. The People have the burden of going forward with evidence to establish a lawful rationale for the police conduct. The defendant, however, has the burden of proving a lack of lawful basis for the police action by a preponderance of the evidence.

A confession or admission is admissible at trial in this State only if its voluntariness is established by the People beyond a reasonable doubt. The defendant has the burden of persuasion that a waiver of the Miranda rights was not knowingly made OR that his right to counsel had attached.

On July 25th, August 2nd and 3rd, 2006, the Court held a combined Huntley/Mapp/Dunaway hearing.

FINDINGS OF FACT

On March 8, 2006 at approximately 3:05 p.m., Officers Daniel Weis and Michael Natz of the Bureau of Special Operations (BSO) were in plainclothes and an unmarked car on assignment in West Hempstead, New York, assisting other BSO officers (Officer Alonge and his partner). At 3:05 p.m., they were in the southwest corner of the parking lot of National Liquidators. Both Weis and Alonge stated this was a known drug location (it was across Hempstead Avenue from the Courtesy Motel) and both had made drug arrests in this parking lot and many more in the general vicinity.

Officer Alonge and his partner, also from BSO, were parked across the street in the Courtesy Motel lot, near the train station at 3:05 p.m. when he observed a motorcyclist enter the National Liquidators lot, do a loop of the lot and start a second loop. He called Weis and alerted him to observe the motorcyclist.

Weis' vehicle was parked in the lot facing east and he observed a motorcyclist approach a blue Nissan Stanza, which was parked in the next row of spaces and 2 parking spaces over to the north. Weis was not sure of the exact location in the lot. Weis saw the motorcyclist speak to the driver and then get in the rear passenger seat of the Nissan and reach forward towards the driver and hand him something. Weis observed this through the rear window of the Nissan. Weis saw the driver, who he identified as defendant McCants, give the motorcyclist two small packages. The motorcyclist left the vehicle. Weis did not see the contents of the packages, but testified that the motorcyclist gave money to the defendant.

At this point, Weis pulled his vehicle, lights on, behind the Nissan while Alonge's vehicle pulled up in front of it at Weis' request. Weis grabbed the hand of the motorcyclist, who dropped the packages. Weis retrieved them and, upon inspection, believed them to contain crack cocaine.

Alonge went to the driver's side, where he asked defendant for his identification and to step out of the car. Defendant complied with both requests. Weis then told Alonge, "he's good to go, he did a hand-to-hand", and Alonge handcuffed defendant, who was later transported to the 5th Precinct.

Defendant was out of the Nissan a few minutes when Weis was standing with him and defendant told him, "that's all I had" and, referring to the passenger in the Nissan, "he had nothing to do with it."

After everyone was out of the Nissan, and the door was open, Weis looked inside and saw on the console a medium baggie containing numerous small, empty baggies inside. Weis stated the small baggies were the type used to package drugs.

At the Precinct, Alonge searched defendant in the first floor bathroom and found a baggie containing smaller bags of what he believed to be crack cocaine. The baggie was tied to the buttonhole of his boxer shorts. He also recovered \$1,635 in U.S. currency from defendant's pants pockets.

A defense witness, a real estate appraiser, testified that he went to the parking lot and, based on Weis' testimony as to the locations of the cars, measured the distance from Weis' car to defendant's car as approximately 35 feet.

At the Precinct, during the evening of March 8, 2006, Detective Steven Holmes met with defendant. He advised defendant of his constitutional rights by reading from the rights card at approximately 5:10 p.m. Defendant answered yes to both questions on the card and signed the card, as did Holmes and Detective Greco.

Holmes first spoke with the arresting officers at 4:30 p.m. and was told about the arrest and that defendant was considering cooperating. Detective Pizzaro spoke to defendant before Holmes did. Holmes and Pizzaro spoke before Holmes interrogated defendant.

Thereafter, starting at approximately 9:12 p.m., Holmes interrogated defendant and prepared a written statement based on defendant's answers. Defendant also read and signed the statement. Holmes testified there were no threats, force, or coercion.

CONCLUSIONS OF LAW

An inference of probable cause may be drawn when a trained and experienced officer observes the delivery of glassine envelopes, the hallmark of a drug transaction, in an area notorious for narcotics activity. *People v. McRay*, 51 NY2d 594 (1980). However, a mere plain-view sighting of a manila envelope being passed by a pedestrian to a driver does not give rise to probable cause it contains marijuana. *People v. Corrado*, 22 NY2d 308 (1968); *People v. Jeffries*, 38 NY2d 722 (1975); *People v Bennett*, 170 AD2d 516 (2d Dept. 1991).

An observation of an individual exchanging money in a particular manner for an unidentified object in a drug-prone location and the secreting of a plastic bag in a construction site was sufficient to establish probable cause based on the officer's experience. *People v. Jones*, 90 NY2d 835 (1997). Based on this holding, probable cause can be found without the telltale exchange of glassine envelopes for money if, under the totality of the circumstances,

other indicia of criminal activity exists. This may include the manner of the transfer of the object, the exchange of money for the item, and any furtive conduct by the participants. *People v. Jones, supra*; *People v. Hartman*, 294 AD2d 446 (2d Dept. 2002); *People v. Moore*, 240 AD2d 762 (2d Dept. 1997).

The observation by Officer Weis of the exchange of two small bags for money by defendant and the motorcyclist, inside defendant's car, in a drug-prone area, is sufficient to constitute probable cause even where the contents of the bag are not visible. *People v. McNatt*, 65 NY2d 1046 (1985); *People v. Cureaux*, 147 AD2d 493 (2d Dept. 1989). The manner of the exchange itself and the behavior of the participants are sufficient indicia of criminal activity in an area known for drug activity.

Since defendant's arrest was based on probable cause, once he and the passenger were removed from the vehicle, the observation and recovery by Officer Weis of the empty baggies on the console through the open door was proper. *People v. Torres*, 74 NY2d 224 (1989). Further, since the arrest was proper, so was the search of defendant's person and the recovery of drugs and U.S. currency found on his person.

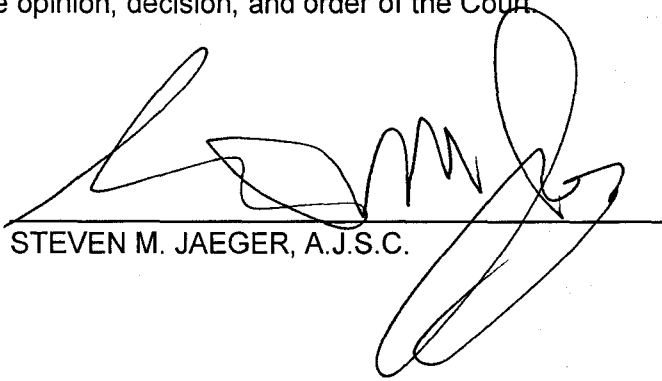
As to the statements, the Court finds that the oral statement to Officer Weis was spontaneous and not the result of police interrogation, or its functional equivalent. *People v. Bryant*, 59 NY2d 786 (1983); *People v. Morgan*, 226 AD2d 398 (2d Dept. 1996).

As to the written statement given to Detective Holmes at the Precinct, the Court finds that the defendant was in custody, he received his constitutional rights, and that he knowingly waived those rights prior to giving the statement. *People v. Chavis*, 147 AD2d 582 (2d Dept. 1989). The Court finds that the People sustained their burden that the statement was voluntary and was not the product of intimidation, force, threats, coercion, or improper police conduct. *People v. Huntley*, 15 NY2d 72 (1965).

Accordingly, the motion to suppress physical evidence seized from the defendant is denied. Further, the motion to suppress the oral and written statements given by defendant is also denied.

The foregoing constitutes the opinion, decision, and order of the Court.

Dated: September 5, 2006



STEVEN M. JAEGER, A.J.S.C.

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