

**People v Saleh**

2007 NY Slip Op 30929(U)

April 19, 2007

Supreme Court, Queens County

Docket Number: 0001373/2006

Judge: Darrell L. Gavrin

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SUPREME COURT - STATE OF NEW YORK  
CRIMINAL TERM - PART K-21 - QUEENS COUNTY  
125-01 QUEENS BLVD, KEW GARDENS, NEW YORK 11415

P R E S E N T :

HON. DARRELL L. GAVRIN,  
JUSTICE

	x	
THE PEOPLE OF THE STATE OF NEW YORK	:	Ind: No. <u>1373/06</u>
	:	
-against-	:	Motion <u>TO SUPPRESS</u>
	:	
ALI R. SALEH	:	
Defendant	:	
	x	

MARTIN L. SCHMUKLER, Esq.  
For the Motion

ANDREA CARLINO, ADA  
Opposed

The defendant 's motion to suppress physical evidence is denied (see Memorandum Decision, dated April 19, 2007).

Date: April 19, 2007

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DARRELL L. GAVRIN, J.S.C.

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS: CRIMINAL TERM: PART K-21

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THE PEOPLE OF THE STATE OF NEW YORK	:	BY: DARRELL L. GAVRIN
	:	
-against-	:	Dated: April 19, 2007
	:	
	:	INDICTMENT NO. 1373/06
	:	
ALI R. SALEH	:	
DEFENDANT	:	
	:	

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The defendant, Ali Saleh, was indicted for the crime of trademark counterfeiting in the first degree. A *Mapp* hearing on defendant’s motion to suppress physical evidence seized pursuant to two search warrants was held on March 14, 2007. The sole witness at this hearing was Police Officer Michael Girdusky, who was called by the People. The Court finds his testimony credible and makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On November 28, 2005, Police Officer Girdusky and his sergeant went to the Citi-Wide Self Storage facility in Queens County to investigate a report of counterfeit tradework jackets and to locate bin 2P32. When they reached storage bin 2P32, they found two male hispanics sitting on a box in front of the storage bin. There were black jackets all over the floor from which the two men were cutting off “Virtue” labels with a razor, revealing “Northface” labels underneath. Officer Girdusky, who had received training from Counter Tech, an agency familiar with counterfeit goods, recognized this as a procedure employed in counterfeit labeling. There were tags and zippers in plastic bags on the floor in the area where the two men were working.

The door to storage bin 2P32 was open and Officer Girdusky was able to see that there were more boxes inside that bin. The two male hispanics were placed under arrest and a guard was placed in front of storage bin 2P32.. The jackets and other paraphernalia on the floor were gathered up by Officer Girdusky. He then asked David Schwartz, who is

employed by Counter Tech, to examine the jackets. Schwartz confirmed that these were not authentic Northface jackets.

On November 30, 2005, Officer Girdusky applied for a search warrant for bin 2P32. A search warrant was issued by Judge Harrington authorizing a search of that bin “for jackets and accessories bearing counterfeit trademarks of Northface, and any device adopted or capable of counterfeiting trademarks.” This search warrant was executed by Officer Girdusky that same day. Approximately 250 jackets with counterfeit trademarks of Northface and other counterfeit paraphernalia, zipper toggles and labels, were recovered. When he executed the search warrant, Officer Girdusky learned that the defendant, Ali Saleh, who owned bin 2P32, also owned two other bins on the eighth floor, bins 8R16 and 8R27. Based on this information, the officer obtained a second search warrant signed by Judge Knopf on November 30, 2005, authorizing a search of bins 8R16 and 8R27. This warrant was executed on December 1, 2005. Seventy eight cases, each containing 12 jackets with counterfeit labels, were found in bin 8R16 but bin 8R27 was empty.

#### CONCLUSIONS OF LAW

When the police arrived at the Citi-Wide Self Storage facility, they observed two hispanic men engaged in the counterfeit labeling of jackets. The officers clearly had probable cause to arrest these men. It was also proper for the officers to seize the jackets and other counterfeit paraphernalia in plain view on the floor. As required in People v. Diaz, 81 NY2d 106, the police were lawfully in a position to observe these items; they had lawful access to the items they seized then, and the incriminating nature of the items was immediately apparent to the officers. (Also see, People v. Brown, 96 NY2d 80). Therefore, the defendant is not entitled to suppression of this evidence.

The property in the storage bins was seized pursuant to two search warrants. This court has examined the search warrants that were used to search the storage bins and the underlying affidavits of Police Officer Michael Girdusky. These affidavits which are based on observations made by the officer and information obtained from reliable sources, establish that there was probable cause to believe that jackets with counterfeit trademarks and other evidence of counterfeit labeling would be found in the bins designated to be searched. The affidavits also satisfied the two-pronged test set out in Aguilar v. Texas, (378 US 108), for

they established that the source of the officer's knowledge was reliable and the information entitled to be credited. (See generally People v. Bartolomeo, 53 NY2d 225; People v. Wirchansky, 41 NY2d 130; People v. Hanlon, 36 NY2d 549.)

The search warrants in this case specified the bins to be searched at the storage facility and particularly described the property to be seized. As required by Marron v. United States (275 US 192, 196), "nothing is left to the discretion of the officer executing the warrant." Therefore, the search warrants complied with the requirements of the Fourth Amendment. ( See Anderson v. Maryland, 427 US 463; People v. Grimes, 51 AD2d 625. Cf . United States. v. Klein, 565 F 2d 183, where the warrant contained only a generic description of the items to be seized).

Accordingly, the defendant's motion to suppress the physical evidence is denied.

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**Darrell L. Gavrin, J.S.C.**