

People v Townsend

2011 NY Slip Op 34314(U)

June 14, 2011

County Court, Monroe County

Docket Number: 2011-0062

Judge: Vincent M. Dinolfo

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STATE OF NEW YORK
COUNTY COURT

COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

11-1172

-VS-

Ind. No. 2011-0062

MATTHEW ANTHONY TOWNSEND

APPEARANCES: JULIE M. HAHN, ESQ.
Assistant District Attorney
for the people

PAUL J. VACCA Jr., ESQ.
Defense Attorney
for the Defendant

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MONROE COUNTY CLERK

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DECISION AND ORDER

VINCENT M. DINOLFO, J.

Defendant has raised several suppression issues in his moving papers upon which the Court has reserved decision. They will be addressed at this juncture.

Defendant has moved for the suppression of the "items seized from the garbage pail of Matthew Townsend without a warrant." The People have opposed that portion of the motion stating that, "[O]n January 14, 2011, members of the Rochester Police Department... removed various items of paperwork bearing the defendant's name, as well as a full can of Natural Ice beer from a garbage receptacle outside of defendant's home."

It is well settled that a defendant seeking the suppression of evidence has the

burden of establishing standing by demonstrating a legitimate expectation of privacy in the object searched. People v. Ramirez-Portoreal, 88 N.Y.2d 99, 108 (1996). Additionally, “[A] legitimate expectation of privacy exists where defendant has manifested an expectation of privacy that society recognizes as reasonable.” People v. Ramirez-Portoreal, *supra*, at 108. A person has no expectation of privacy in a garbage receptacle into which he or she has abandoned property. People v. Mora, 259 A.D.2d 562 (2d Dept. 1999): *see also*, People v. Oliver, 39 A.D.3d 880 (2d Dept. 2007). [the People have the burden of demonstrating abandonment, which is the relinquishment of an expectation of privacy. A person abandons property when he or she voluntarily relinquishes possession.] Here, because the beer can and the various papers had been abandoned by Defendant in his affirmative action as rendering them “disposed”, he has no expectation of privacy in the garbage and Defendant’s motion to suppression that which was seized from the outside “garbage pail” is denied.

Defendant has also moved to suppress the photographs of the footprints in the snow which are purported to be his. They are characterized as “his alleged footprints in the front of his house located at 552 Jay Street, Rochester, New York.” The People have opposed the suppression of the photographs submitting, “[T]he defendant made his prints available for public viewing by walking outside of his house onto a public street.” A person does not have an expectation of privacy of that which he or she makes readily available for public viewing. People v. Bauer, 140 A.D.2d 450 (2d Dept. 1988). It has been held that there is nothing unlawful about a police officer taking a picture of that which has become part of the public domain. People v. Wilkins, 10 A.D.3d 666 (2d Dept. 2004). Here, a photograph of a

footprint which has been left in the snow on a public area is not an unreasonable search by any means. Accordingly, absent any subsequent proof to the contrary, a photograph taken in the snow of a footprint which has been left in a public area is not to be suppressed and the motion in this regard is denied.

Next, Defendant has requested a hearing on the issue of probable cause to issue the subject search warrant of Defendant's residence. Defendant has stated, "[A] hearing is requested regarding the reliability of the information obtained by the police in order to obtain the Search Warrant." [Defendant's Motion paragraph 58, p. 20]. Defendant also subsequently submits that even if the Court were to find that probable cause for the issuance of the search warrant existed, there is not sufficient information to authorize the issuance of a "no-knock" provision contained within it.

It has been continuously held that there is a strong judicial preference for search warrants. People v. Hanlon, 36 N.Y.2d 549 (1975); People v. Leggio, ___ A.D.3d ___, 2011 WL 1902176 (2ND Dept., May 17, 2011). To establish probable cause, a search warrant application must provide sufficient information to support a reasonable belief that evidence of a crime may be found at a certain place. People v. Bahr, 35 A.D.3d 909 (3rd Dept. 2006). In furtherance of a determination as to whether probable cause exists, it may be supplied in whole or in part by hearsay information, provided that the information is shown to be reliable and the hearsay informant has a basis of knowledge for the information given. People v. Walker, 27 A.D. 3d 899 (3rd Dept. 2006), *lv. denied*, 7 N.Y.3d 764 (2006).

The Court has had the opportunity to review the search warrant application in the present case. The majority of the information which forms the basis of the search

warrant was based upon information which was given to Inv. Dominic by other police personnel which he then verified by personal observation. The other information which was used in the application was given to Inv. Dominic by Off. Morales, whose personal observations were related directly to Inv. Dominic. The Court has concluded that the information contained in the application for the search warrant provided the issuing court with sufficient information to support a reasonable belief that evidence would be found in the location named in the search warrant. Further, there is no need for a hearing on this issue because Defendant "failed to make the necessary substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit." People v. Pleczyj, 254 A.D.2d 753 (4th Dept. 1998); *citing and quoting*, Franks v. Delaware, 438 U.S. 154, at 155-156 (1978). Moreover, since Defendant did not challenge the veracity of Inv. Dominic, the police officer affiant, he is not entitled to an *Alfinito* hearing [See; People v. Alfinito, 16 N.Y.2d 181 (1965)]. People v. Leggio, *supra*. Accordingly, Defendant's motion for suppression based upon the lack of probable cause for the issuance of the search warrant and the request for a hearing in that regard is denied.

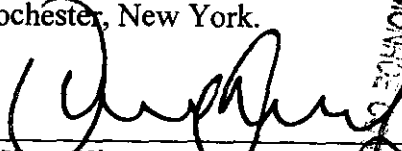
The final argument relates to the "no-knock" provision of the warrant. The issuing judge had specifically found that adequate grounds existed for the executing officers to enter the premises without giving notice of their authority or purpose. A "no-knock" provision can be granted if there is reasonable cause to believe that: (1) the property sought may be easily and quickly destroyed; or (2) the giving of such notice may endanger the life or safety of the executing officer or another person. CPL

§690.35; People v. Lewis, 35 A.D.3d 824 (3rd Dept. 2006).

In the present matter, the affiant states that the police will be searching for trace evidence such as hair and fibers, and personal papers of Defendant which would tend to demonstrate that an assault or murder had been committed and that Defendant participated in the commission of the crime. He further notes that surveillance placed Defendant in the building at the time when execution would take place. He requested a "no-knock" provision to prevent Defendant from destroying pertinent incriminating evidence in the interim between when the police announced their presence and the time in which they were allowed admittance. The issuing court had the opportunity to both question the affiant and review the facts and circumstances surrounding this request. This Court declines to hold that the "no-knock" provision was invalid and to the extent that Defendant seeks suppression of tangible property due to the existence of the "no-knock" provision in the subject search warrant, that motion is denied.

This constitutes the Decision and Order of the Court.

Dated this 14th day of June 2011 at Rochester, New York.


Hon. Vincent M. Dinolfo
County Court Judge
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