People v Hill
2013 NY Slip Op 34175(U)
May 17, 2013
Supreme Court, Bronx County
Docket Number: 4399-10
Judge: Albert Lorenzo
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SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: PART T - 11

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THE PEOPLE OF THE STATE OF NEW YORK :

-against- : Ind. No. 4399-10

RAYEHEAME HILL, : DECISION AND ORDER

Defendant. :

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LORENZO, J.:

Defendant is charged with Robbery in the First Degree and related charges. The Court conducted a *Mapp/Huntley/Dunaway* hearing on May 6, 2013. Defendant sought to suppress physical evidence recovered from his uncle's apartment; a gun recovered outside his uncle's apartment, property recovered from Jacobi Hospital, property from the defendant's aunt's car, as well as statement evidence. The People called one witness, Detective Peter Cullen, whose testimony the Court credits for the most part. The defendant called Mr. Miller Hill to testify and the Court credits his testimony in part as well. After considering the hearing testimony and the arguments of the parties, the court orally granted defendant's motion in part and denied defendant's motion in part, with a written decision to follow. The following constitutes the court's findings of facts and conclusions of law.

FINDINGS OF FACT

Detective Peter Cullen (Shield # 5139) testified that he was assigned to the 50th Precinct Detective Squad since 2007, and prior to that was assigned to the 50th precinct as a patrol officer since 1998. On November 17, 2010, while he was at work, he was assigned to investigate a robbery which occurred at 2825 Claflin Avenue, Bronx County. Detective Cullen met with the victim of the robbery, Mr. Maurice Frye at the 50th Precinct

Detective Squad. Mr. Frye informed Detective Cullen that on November 17, 2010 he was traveling on the elevator in his building going to the sixth floor. The elevator stopped at the third floor and when the doors opened, a man pointed a gun at him. He described the man as a male black, 20-30 years of age, six foot one inches tall, wearing jeans, a dark jacket, had a mask covering the area below his nose, and was holding a black revolver. The person then pointed a gun at Mr. Frye and took his driver's license, two rings, a necklace and $60.00 in cash. After he took his property, a shot was fired in a downward direction. The defendant then told the victim, Mr. Frye, to turn around and face the wall, after which he fled. Mr. Frye then went downstairs to meet his girlfriend and called 911.

Detective Cullen testified that he spoke to Officer Whitiker on the scene, who informed him that there was no bullet hole or blood in the elevator where the incident occurred, which lead him to believe that it was possible that the perpetrator had shot himself. Detective Cullen then heard on his radio in his office that a man with a gunshot wound to the leg walked into Jacobi Hospital. Detective Cullen then, along with Sergeant Miller, proceeded to Jacobi Hospital with Mr. Frye and his girlfriend. When Detective Cullen arrived at the hospital at approximately 10:35 p.m., he spoke to Mr. Rayeheame Hill, who had been shot in the leg and was being treated in the emergency room. (The detective pointed to the defendant, Mr. Hill, and identified him in court as the individual he saw in the hospital). Detective Cullen stated that he spoke to Mr. Hill in the hospital and that there were other police already there by the time he arrived, but he did not speak to them and did not recognize any of them as being from the 50th precinct. (The Court takes judicial notice that Jacobi Hospital is located within the confines of the 49th Precinct). Mr. Hill told him that he had was walking down Webster Avenue and 184th Street and that he

heard a bang and felt pain in his leg. Detective Cullen stated that Mr. Hill was not under arrest at this time and was in a private room in the emergency room. Detective Cullen then took possession of Mr. Hill's clothing which was under the hospital bed where the defendant lay, inside of two brown paper bags. The detective could not recall if the bags were stapled shut. He further testified that he did not tell Mr. Hill that he was taking his clothes nor did he ask his permission to take the clothes, or to look inside of his bags. He did not recall if he spoke to any hospital staff at the time. He took the clothes outside of the emergency room and opened the bags outside the hospital. Inside the bags, he found boots, pants, socks, jacket, a shirt and thermal underwear. He testified that he took possession of the clothes because Mr. Hill was the victim of a crime and the clothes would be sent to the lab for testing as part of the investigation. When the detective picked up the clothes from the bag, a ring fell out of the defendant's pants pocket, along with a driver's license that the detective removed from said pants for inventory purposes. The driver's license belonged to Mr. Frye, the robbery victim, who identified his belongings at the hospital. Detective Cullen spoke with Mr. Hill's girlfriend and was informed he drove to the hospital with her at which time she gave the Detective Mr. Hill's car keys (and possibly other keys belonging to Mr. Hill). Detective Cullen ran the plates of the car (a Toyota Camry) and it came back registered to a person named Linda Hill. They secured the vehicle by driving it to the 50th precinct and went to Linda Hill's address at 2291 University Avenue, Bronx County (where the defendant also resides with his Uncle Miller Hill and others). Detective Cullen testified that he went to Miller and Linda Hill's residence with Detective Tracy, Detective Bennett, and Sergeant Miller, who were all dressed in plain clothes. They were the only police there until the gun was found and the police from the

Evidence Collection Unit arrived. When the police arrived at 2291 University Avenue, they met with Mr. Miller Hill, Rayeheame Hill's uncle, who is and has been his legal guardian since the defendant was five years old. Detective Cullen was informed that Miller Hill was the superintendent of the building. Detective Cullen spoke with Miller Hill who told him that his nephew, the defendant, was there earlier in the day, that he stayed there, that he had a bullet wound in his leg and that he had been the victim of a robbery. Detective Cullen also testified as to the layout of the building and Miller Hill's basement apartment. There were two locked gates to go through from the sidewalk to get to the superintendent's apartment. Between the two gates were garbage cans and between the second gate and the superintendent's door, there was an area with what appeared to be tools. Detective Cullen recalls that both gates were locked, that Miller Hill came out of his apartment at some point to let them inside, that the police did search inside the area where the garbage cans were located and that he does not recall seeing a dog.

Detective Cullen also stated that Miller Hill met them at one of the locked gates and let them inside, although he could not recall which gate, nor how they entered the first gate, but stated he did not use any keys, and that he did not know if he had the defendant's keys. He stated that the police did not use any coercion or threats and that Miller Hill consented to have his property searched and signed the consent form (People's Exhibit No. 2 in evidence) after the police read it to him. The form stated that the police could search the apartment, the premises and accessible areas. The detective testified that the police searched the common area, that being a part of the living room where the defendant stayed and kept his clothes and personal belongings. The search revealed a taser and a bb-gun "mixed in with Rayeheame Hill's clothes." (T at p. 16). Linda Hill signed a consent

form for the police to search her Toyota Camry which was taken to the 50th Precinct. The search of the car revealed a ring found in the center console which the complainant identified as a piece of his jewelry (one of two rings) which was taken during the robbery.

Additionally, a search of the outside area between the second gate and the superintendent's apartment door revealed a .38 caliber revolver located in a pipe in the alleyway (recovered by Detective Bennett). The police called the Evidence Collection Unit which responded to the location and processed the gun. It was vouchered and sent to the laboratory for testing.

Detective Cullen also stated that he did follow up on Rayeheame Hill's story and checked to see if there had been any 911 calls of a shooting in the area of 184th Street and Webster Avenue (after he returned to the precinct and after searching Miller Hill's apartment), but did not find a record of any shots fired or shootings. He also stated that he did not go to the location of Webster Avenue and 184th Street to investigate the shooting of the defendant.

The following morning, on November 18, 2010, Detective Cullen testified that he went to 2291 University Avenue at approximately 1:30 a.m. with other police officers. He had his weapon and his badge at the time, did not see any other officer's guns at the time, but assumed everyone had a gun and a badge. He recalled having a conversation with Miller Hill, but did not recall where the conversation took place - inside of the apartment or outside in the alleyway. Detective Cullen testified that the police asked Miller Hill if they could search the apartment and the surrounding area and stated that Miller Hill agreed and let them inside of his apartment. He further stated Miller Hill also told him that he knew his nephew had been shot. Detective Cullen also stated that he filled in some information on

two consent forms, one for Miller Hill to sign for the premises, and the other for his wife, Linda Hill, to sign, regarding a search of her vehicle. According to Detective Cullen's testimony, both of them signed said consent forms voluntarily (See People's Exhibit No. 2 and 3 in Evidence).

Defense called Miller Hill, the defendant's uncle, as a witness at the hearing. He testified that the defendant is his nephew, that he has been his legal guardian since he was five years old, that he lives with him and his family now and did so in 2010 (at the time of the robbery), and that the defendant also gets his mail at that address. On November 18, 2010, at approximately 12:30 a.m. - 1:00 a.m., he was in his apartment sleeping when he heard a loud disruption coming from the area outside of his apartment where the garbage cans are kept. He also heard the bell ring several times. At the time, his wife, his nieces and his nephews were also sleeping. He got up, got dressed, went to his door, opened it slightly and saw the police standing outside his apartment in the area between the first and second gates. Miller Hill testified that there were four policemen in plainclothes and two in NYPD blue informs, and also testified that there were "like about eight of them." (T at p. 76). He also stated that he thought "somebody was breaking into the house" and when he checked he saw "a lot of white people at the gate." (T at p. 77). Miller Hill stated that the police told him that his "son" had been in a shooting and in a "robbery accident" and that he had been shot. Mr. Miller Hill further stated that earlier his nephew "pulled down his pants and showed me where he got shot at and I told him to go to the hospital, so he went to the hospital." (T at p. 79). Miller Hill stated that the police "insisted" on talking to him inside of his apartment and "forced their way in." He stated that he signed the consent to search form because he was scared of the police, he did not read it, was half asleep at

the time, and signed the form to get them out of the house. (The Court notes that Mr. Hill could read as he read the form on the witness stand when he testified). He also testified that the police only searched the area inside of his apartment where he told them that his nephew stayed and where the defendant's personal belongings were located inside a section of the common living room. He further testified that both gates are always locked and they are incapable of remaining open. Tenants to the building and his family members have keys to the first locked gate, and only family members have keys to the second locked gate. Miller Hill testified that the police officers told him that they used the keys they had (defendant's keys that were given to Detective Cullen at the hospital by his girlfriend) to enter through the first gate (although Detective Cullen stated he did not even know if he had the keys to the gates and was not aware that any police officer used any keys to open either of the locked gates). Miller Hill stated he was shown the defendant's keys by the police and when he asked for the keys back, he was told they needed to be kept as evidence. He testified that he gave the police permission to search the area in his apartment where his nephew stayed, signed the consent to search form, that he also took his wife another consent to search form (in the bedroom) and that she signed it, although he said he did not recognize her signature on the consent form in evidence. Miller Hill stated that when he was asked if the police could search the area where his nephew stayed, he replied "go ahead, no problem, go search his area." (T at p. 79). Miller Hill also testified that the police did not use physical force, did not hit him, did not point weapons at him or threaten him, but yet they "insisted on getting into his apartment." He also stated he did not even know if they had their guns with them. (T at p. 99). He also testified that the police did not search his bedroom, which contradicts the Detective's testimony that the

police searched the entire apartment.

Conclusions of Law

A. Consent to Search Forms (Vehicle and Apartment and surroundings)

A warrantless search of an individual's home or personal effects is *per se* unreasonable and therefore there is a presumption that such searches are unconstitutional without an applicable exception to the warrant requirement. One of the major exceptions to this warrant requirement is a voluntary consent to search. It is well settled that the People have the heavy burden of proving the voluntariness of a defendant's consent to search (or a third party as in this case). See *People v. Gonzalez*, 30 NY2d 122 (1976); *People v. Whitehurst*, 25 NY2d 389 (1969), and the defendant has the burden of establishing a reasonable expectation of privacy in the premises searched or in the items seized. Also, it is a question of fact to be determined from the totality of circumstances (*Schneckloth v. Bustamonte*, 412 US 218 (1973); *People v. DePace*, 127 AD2d 847 (1987); and *People v. Abrams*, 95 AD2d 155 (1983). To meet its burden, the prosecution must "demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied" by the actions of the police authorities. *See Schneckloth v. Bustamonte*, 412 at 248. Consent may be established by conduct as well as by words (*People v. Smith*, 239 AD2d 219, 220 [1st Dept. 1997] [citing *People v. Satornino*, 153 AD2d 595 [2d Dept. 1989]]; *appeal denied*, 90 NY2d 911). A submission to authority does not constitute consent (*Gonzalez*, 39 NY2d at 129 [citations omitted]), and "[w]hether consent is given voluntarily or is the product of police coercion . . . is a question

of fact to be determined from the totality of the circumstances." (*People v. Long*, 124 AD2d 1016 [4th Dept. 1986] [citing *Schneckloth v. Bustamonte*, 412 US 218, 227 [1973]]). Additionally, there is not a "bright line" test or one specific factor which determines voluntariness - it is a totality of the circumstances. *People v. Bongiorno*, 243 AD2d 719 (2nd Dept. 1997). The Court of Appeals has defined a consent to search as voluntary "when it is a true act of the will, and equivocal product of an essentially free and unconstrained choice." *People v. Gonzalez*, 39 NY2d 122 (1976).

Firstly, the Court will address the search of the vehicle. The Court finds that the defendant does not have standing to challenge the search of the vehicle. There was no evidence that the vehicle was his, that he was ever driving it, that it was loaned to him, or otherwise. The detective testified that he was given the keys to the car by the defendant's girlfriend, which defense counsel argues was improper and as such violated the defendant's Fourth Amendment rights. However, the defendant did not show that he had an expectation of privacy in said vehicle (which he was required to do to meet his burden), and therefore has no standing to challenge the search that followed. *People v. Rodriguez*, 69 NY2d 159 (1987). There was no evidence adduced at the hearing as to whether the defendant was a passenger, the driver, or had permission to use the car, and the car was not registered to him. The defendant's girlfriend giving Detective Cullen the defendant's car key does not in itself give the defendant standing and a reasonable expectation of privacy in the vehicle. *People v. Sanchez*, 64 AD3d 618 (2nd Dept. 2009). The Court notes that it would have to speculate in this case if it were to conclude that Linda Miller gave the defendant a key to her car and gave him permission to borrow and/or use it, or guess at

how many times the defendant has used her car in the past, if ever. And furthermore, even if he had an expectation of privacy, this Court contends that it did not necessarily extend to inside of the center console based upon the lack of evidence before this Court.

Even assuming that the defendant had standing to challenge the search of the car, the Court finds that contrary to the defendant's conclusion, Linda Hill (wife of the defendant's uncle), voluntarily consented to the search of her vehicle, and did so by voluntarily signing a consent to search form handed to her by her husband who received it from Detective Cullen. The evidence adduced specifically at the hearing established that she was given a consent form to sign by Miller Hill in her bedroom, who received it from Detective Cullen. Miller Hill's own testimony was that he went into the bedroom where his wife was sleeping and gave her the consent form which the detective had already filled out and which was registered to her. She signed it and gave it back to Miller Hill who returned it to Detective Cullen. According to Miller Hill's testimony, there were no police officers in the bedroom with Linda Hill when she signed the document. There was no evidence that she did not wish to cooperate or that she hesitated to sign said consent form. Defense counsel relies on the case of *Hall* and argued that as in *Hall*, the People failed to prove the substance of the conversation between the police officers and the person giving consent (the defendant in the Hall case) and therefore "were unable to determine what a reasonable person would have understood from the exchange." *People v. Hall*, 35 AD3d 1171 (4th Dept. 2006). However, the Court notes that in the *Hall* case, at issue was the scope of the search that the police were authorized to conduct pursuant to the defendant's consent and specifically what areas of the vehicle they were authorized to search. In the *Hall* case, the police were authorized by the defendant orally to "look or check in the

vehicle" and searched the trunk area and recovered a gun. In the present case, the Detective received written consent for a search of the owner's vehicle, and found a ring (a proceed from the crime) in the center console of the vehicle. There was no testimony as to whether the console in the vehicle was an open or closed area. However, this is not determinative of this Court's decision. Under the existing circumstances, this Court concludes that Linda Hill's consent to the search of her vehicle was voluntarily given, was not the product of coercion or any police threats, and that as the lawful owner of the vehicle, she had the legal authority to give the police her consent to the search, and the police did not search outside the scope of their authority. The Court finds that the ring recovered from the center console of Linda Hill's vehicle is therefore admissible at trial.

The Court notes that defense counsel began to argue that the inventory search of the vehicle was not valid and therefore the item should be suppressed and the People stated that they were not relying on the "inventory search" as an exception for this evidence to be admissible at trial. Therefore, there was no need for this Court to address the issue.

Secondly, as to the .38 revolver gun which was recovered by Detective Bennett outside the apartment in an alleyway which was locked to the public, this Court finds that the consent to search form which Miller Hill signed was also voluntarily given and was within the scope of the search (the apartment and its accessible areas). It is therefore admissible at trial. Furthermore, as he was the superintendent of the building and lived in this apartment, he clearly had the authority to consent to the search of the apartment and the outside surroundings, and to give consent to search his living room, where he testified the defendant stayed and kept his personal belongings. He also testified several times that he gave his consent for the police to search this area. Although he stated he was scared

and "they forced their way in" and "insisted" on entering the apartment, the record is devoid of any such evidence. He stated he did not read the consent form and only signed it to get the police to leave his house. The facts adduced at the hearing even as testified to by the defense witness, Miller Hill, do not amount to police coercion by way of submission to authority.

When Mr. Hill awoke to the bell and noise he claimed were coming from the police outside, he opened his door, the police were not at his door, but were outside the second gate in the alleyway area outside his door. He let them through the second gate, then let them inside of his apartment, and signed the consent to search form. He testified that the police did not have their guns drawn, no one threatened him or anyone in his family, and that the police in fact only searched the area in his apartment that he said they could search (ie. They did not enter the bedrooms). Miller Hill also testified that there were eight or so police present at that time inside of his apartment, and the Court notes that Detective Cullen testified there were approximately four police officers present and then the Evidence Collection Unit showed up later, after the gun was found inside the pipe in the alleyway. The Court notes that the mere number of police officers present in the apartment and the fact that they did not advise Miller Hill or his wife that they had a right to refuse consent, are not sufficient factors alone to negate a lawful consent search which was otherwise freely and voluntarily given. *People v. Gonzalez*, 39 NY2d 122; *People v. Springer*, 92 AD2d 209 and *People v. Buggs*, 140 AD2d 617 (2nd Dept. 1988). Some of the other factors which the Court will look at to determine whether their consent was present is whether the defendant or person giving consent was in custody. Here, Miller Hill and his wife were not in custody, nor were they handcuffed. Another factor that the courts have

considered is whether the individual giving consent acted "evasively" or cooperated with the police (See *People v. Perez*, 37 Misc.3d 734 (Supreme Co. Kings Co. 2012). The testimony elicited at the hearing showed that Miller Hill cooperated fully with the police according to Detective Cullen's testimony, as well as his own testimony at the hearing. He was not evasive, and signed a consent to search form which he admitted signing at the hearing, confirming his signature. Another factor the courts may consider is whether the police informed the person giving consent to search that they had the option to refuse. There was no testimony that the police or Detective Cullen informed Miller Hill of such right to refuse, however, that is only one factor for this Court to consider. (*People v. Gonzalez*, 39 NY2d at 130). There was no testimony that the police showed their weapons, made any verbal or physical threats, stood close to him, or that at any time Miller Hill requested that they leave. Miller Hill's conduct also corroborates that his written consent was made voluntarily.

Lastly, as to the taser and bb-gun which were recovered inside the apartment in question within the defendant's personal belongings in the common area of the living room, the Court finds that absent a subsequent ruling by the Court, they are not admissible at trial, as they are uncharged crimes, are not relevant and would serve only to prejudice the defendant.

In conclusion, regarding the consent to search forms, this Court finds that they were both voluntarily and freely given by Miller and Linda Hill regarding the car, the apartment, and the surrounding enclosed alleyway area. Although the officer's presence obviously contributed to an "atmosphere of authority," it did not rise to a level that rendered both civilian consents involuntary. According to the testimony (which was not definitive), there were at least four officers inside the apartment and then maybe two or so more when the

Evidence Collection Unit arrived. Therefore, the gun recovered in the alleyway between the second locked door and Miller Hill's apartment door is admissible at trial, as well as the ring (which was identified by Mr. Frye as his property taken during the robbery) found in Linda Hill's car.

B. The Gun

It is the Court's position that the defendant did not have standing to controvert the admissibility of the gun recovered from outside his uncle's house, in an outside area where his uncle kept his personal things such as his work tools. The defendant did not show that he had an expectation of privacy in the outside area inside of a pipe, where the gun was recovered. The defendant's uncle also testified that the only area that the defendant stayed in was a section of the common area in the living room.

However, defendant argues that the gun which was recovered in this case must be suppressed because the consent to search the apartment was not voluntarily given by Miller Hill and even if he consented to the search of the living room area where he testified that the defendant stayed, the scope of the search did not extend to the outside area where the gun was recovered. The Court disagrees and finds that the consent to search was valid and the gun was found within the proper scope of lawful search. "A defendant must also establish a legitimate expectation of privacy in the particular area searched in order for a Fourth Amendment challenge to be allowed. " *United States v. Meyer*, 656 F2d 979 (1981). In *Meyer*, the court held that even if the defendant had an expectation of privacy in a particular area, it did not automatically extend to the entire area. The court held that even though the defendants were invited guests in a dwelling, they did not have

standing to contest the area where the cocaine was hidden, in the bathroom cabinet as they did not have an expectation of privacy in that specific area. Additionally, in the case of automobiles, the court found that while the defendant who borrowed a car had standing to challenge certain area's of a car, but not the glove compartment, or an area under the seat, as they did not have an expectation of privacy as to those specific areas. *Rakas v. Illinois*, 439 US 128 (1978). In the present case, while the defendant had standing to challenge the items as an invited overnight guest in his uncle's apartment, he only had a privacy interest in the area where his personal belongings were kept, and there was no evidence that he had any privacy interest in the area in the alleyway outside his uncle's apartment door. Therefore, the gun is admissible at trial.

Lastly, the People argue that even if the defendant had standing, and the consent was not found valid, the gun is admissible under the legal theory that it was "abandoned." However, this argument was not supported by the evidence or any case law as to the weapon being abandoned. The Court finds that according to the testimony at the hearing, the gun was hidden inside of a pipe located in an enclosed area belonging to the superintendent, Miller Hill. Generally, when a person abandons an item, he "relinquishes any reasonable expectation of privacy" in the discarded item and the police may seize the item without complying with the Fourth Amendment and without probable cause. The People have a heavy burden of establishing that the defendant did in fact, abandon or relinquish the property. *People v. Howard*, 50 NY2d 583 (1980). However, this Court notes that the defendant must establish standing to contest the illegal police conduct before the People are obligated to show that the defendant abandoned any property. *People v. Ramirez-Portoreal*, 88 NY2d 99 (1996). Here, neither party met their burden. Defense did not prove that the defendant had an expectation of privacy in the alleyway

outside of the superintendent's apartment, and the People did not prove that the defendant waived or relinquished his expectation of privacy by placing the gun outside his uncle's apartment inside of a pipe. Secreting an item in a hidden place not open to the public where you may return to reclaim the item as in this case, does not constitute abandonment under the law.

C. The Defendant's Property from Jacobi Hospital

The Court finds that the two bags of clothing and their contents that Detective Cullen removed from under the defendant's bed at Jacobi Hospital are not admissible at trial and should be suppressed. The Detective did not have probable cause to arrest the defendant at the time he removed the bags. The defendant was at the hospital in the emergency room and the detective was asking him how he got shot. While the evidence shows that the defendant was clearly a suspect at that time in Detective Cullen's mind, he was a patient in the emergency room and was not under arrest at this point. As such, he did not relinquish his privacy rights to his property and clothing simply because he took them off or they were removed at the hospital to receive treatment for his gunshot wound. There was no evidence at the hearing regarding any actions the defendant took to indicate that he was giving up his possessory rights to his belongings. The defendant's clothes and personal items were enclosed in two paper bags, and were under the defendant's bed at the time the detective removed them without consent (and may have been stapled shut). Therefore, the driver's license recovered from the defendant's pants pocket along with the ring which was also in the bag - both which the victim of the robbery (Mr. Frye) identified as his property at the hospital, are not admissible at trial.

The Court notes that the People argue that the items in the bags should be admissible at trial as they were recovered by Detective Cullen, who had no reason to

believe that the defendant had committed a crime and was only taking his property to the lab to be tested to help solve the shooting he claimed to have been a victim of (*See People v. Quinones*, 247 AD2d 216 (1st Dept. 1998). (Basically, the People's position is that this was not a "search" within the purview of the Fourth Amendment). The instant matter can clearly be distinguished from the *Quinones* case as here, Detective Cullen knew that another crime had been committed aside from the shooting of the defendant, that being the robbery earlier that day of Mr. Frye, who incidentally accompanied the detective to Jacobi Hospital with his girlfriend. This Court feels it is disingenuous for the People to have argued based upon the evidence before this Court that Detective Cullen was visiting and questioning the defendant at the hospital "solely as a victim of a crime" (See *People v. Lewis*, 243 AD2d 256), which defies common sense. Therefore, this matter is factually distinguishable from the cases cited by the People (mainly *Quinones* and *Lewis*). In *Quinones*, the detective appears to have been assigned to investigate the shooting of the individual in the hospital, and unlike the present case, visited the crime scene as part of his investigation and completed a thorough investigation which included a search for shoe and fingerprints at the scene. This differs from the present case where little to no investigation was done by Detective Cullen. Nor do the facts in *Quinones* show that the detective knew or had reason to believe that there was another crime which had taken place involving the individual at the hospital. In *Lewis,* the court held that the police properly secured the defendant's clothing which was "blood-soaked . . . since the clothing constituted evidence of the stabbing incident . . . and "was the result of a proper inventory search." The instant matter can readily be distinguished as there was no inventory search, and the detective opened the bag while still at the hospital where the victim of the robbery identified the items recovered as belonging to him. Additionally, the *Hayes* case (where

the defendant was already under arrest which differs from the instant matter) held that while the defendant did not have an expectation of privacy in the clothes he had worn to the hospital and already shown to the public, he did however retain an expectation of privacy in the items recovered from the pockets of said clothing. Here, in the instant matter, the ring fell out of a pocket from the clothes and the detective searched the clothes and removed a driver's license from a pocket, thereby making it a violation of the defendant's rights, as does not fall within the "plain view" exception as the People argued. *People v. Hayes*, 154 Misc.2d 429 (Supreme Co. NY Co. 1992). Additionally, the Court finds that the People's argument regarding the fact that the detective searched the defendant's bags as a "safety concern" is not plausible based upon the facts, was not supported by facts adduced at the hearing, or supported by any case law presented to this Court.

This Court finds that the defendant was a patient in the emergency room of the hospital at the time the detective reached under his bed and took the bags containing his clothing, which violated the defendant's privacy interests. Furthermore, the bags may have been stapled closed according to the hearing testimony, although the detective could not recall. There is no testimony in this case regarding how the defendant's clothing got into those closed bags, and who placed the bags under the defendant's bed. The detective could not recall if and when he ever spoke to any hospital staff and how he knew that the defendant's clothes were inside of the bags. There was no evidence that the hospital staff took possession of these items or were safeguarding them as a "bailee" in this case, but even if they had, as a bailee, the hospital and its staff were required to "exercise ordinary and reasonable care for the defendant's clothes and had no authority to allow them to be taken without a warrant." *Roberts v. Stuyvesant Safe Deposit Co.*, 123 NY 57 (1890).

There is clear testimony that these items recovered inside the bags were not in "plain view" and there were no "exigent circumstances" that would justify the search. For example, there was no evidence adduced that the police could not have obtained a warrant, or that the clothes were about to be destroyed or become unavailable (*People v. Knapp*, 52 NY2d 689 (1981). Although it may seem on its surface as routine police work, "[t]he mere reasonableness of a search assessed in the light of the surrounding circumstances, is not a substitute for the judicial warrant required under the Fourth Amendment." Defense relies on the case of *Watt,* for the proposition that the defendant being wounded in the hospital did not relinquish his privacy rights of his clothes (*People v. Watt*, 118 Misc.2d 930 (Supreme Co., NY Co. 1983). Like the case at bar, in *Watt*, the defendant was not under arrest at the time the police took the bloody clothing from the nurse at the hospital's emergency room and was arrested the following day. The Court in *Watt* held that there was a violation of the defendant's Fourth Amendment rights and that he did not relinquish or abandon his expectation of privacy in his clothes, and the police could have obtained a search warrant. The contention that being admitted to the hospital with a serious wound does not automatically trigger a loss of constitutional rights and Fourth Amendment protections. *People v. Watt*, 118 Misc.2d 930. This Court agrees with the rationale and holding in *Watt*, and finds that the defendant's rights were violated by the warrantless search of the two brown paper bags which were under his bed, and that he had and retained a right of privacy to those bags which he did not relinquish at that time. There clearly was no evidence that the clothes were bloody, or that the defendant was attempting to permanently discard or throw away his clothes or in any way had given up his ownership. On the contrary, the actions of having these clothes placed in bags, and kept close to him under his bed area indicates that he was *not* relinquishing his rights to his clothes and that

they would be returned to him. The fact that Detective Cullen testified that it was part of his routine police work or his procedure to take the victim's belongings at the hospital (which was not entirely clear from the testimony), does not mean that it did not violate the defendant's Fourth Amendment rights. Therefore, the ring that was recovered from one of those bags, and the driver's license belonging to Mr. Frye are suppressed and are not admissible at trial.

D. Defendant's Statement (Huntley/Dunaway)

The defendant's statement to Detective Cullen made at Jacobi Hospital while the defendant was in the emergency room is admissible at trial. There is no evidence showing that the defendant was under arrest and that the questioning by Detective Cullen constituted an interrogation. The evidence shows that the detective inquired as to how he was shot, which is a question that would have been asked of any victim of a crime. The defendant stated in sum and substance that he was shot at Webster Avenue and 184th Street. However, without both custody and interrogation, *Miranda* warnings are not required. As the defendant was clearly not under arrest and was not in the hospital as a result of police conduct, no *Miranda* warnings were necessary, and his statement to Detective Cullen in the hospital is admissible at trial. Whether a person is free to leave is determined by ascertaining whether a reasonable person in the defendant's position, innocent of any crime, would have felt that he was not free to leave. *People v. Yukl*, 25 NY2d 585 (1969). The Court notes that defense counsel stated in her closing argument following the hearing that she was no longer "contesting" the admissibility of this statement.

As to the *Dunaway* portion of the hearing, the Court finds that the police clearly had probable cause to arrest the defendant once Detective Cullen found the victim's driver's license and ring in the bags containing the defendant's clothes, which the victim of the crime identified at the hospital as belonging to him as some of the items taken from him earlier that day in the robbery. The Court, however, does not agree with defense counsel in that the defendant was under arrest at the time Detective Cullen spoke with him in the hospital and therefore all items recovered should be suppressed as "fruits of the poisonous tree."

For the foregoing reasons, defendant's motions to suppress are denied in part and granted in part as explained in detail above.

This opinion constitutes the Decision and Order of the court.

Dated: May 17, 2013
Bronx, New York

ALBERT LORENZO
ACTING SUPREME COURT JUSTICE

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