



SUPREME COURT - STATE OF NEW YORK  
CRIMINAL TERM - PART JHO-H - QUEENS COUNTY  
125-01 QUEENS BOULEVARD  
KEW GARDENS, NY 11415

P R E S E N T:

HON. THOMAS A. DEMAKOS, J.HO.  
Justice

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THE PEOPLE OF THE STATE OF NEW YORK	:	X
	:	
- against -	:	INDICTMENT NO.: 2094/06
	:	
JAMES PETERS and CHRIS STEVENSON,	:	Motions
	:	<i>Dunaway/Mapp/Huntley</i> hearing
	:	as to both defendants
	:	
Defendants.	:	
	:	
	:	
	:	X

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BY: Robert Walters , Esq. for defendant Peters  
James Galleshaw , Esq. for defendant Stevenson  
For the Motions

HON. RICHARD A. BROWN, D.A.  
BY: Ryan Clark ,Esq., ADA  
Opposed

In the opinion of the JHO-H Court, defendants' motions to suppress physical evidence and statements should be granted. See the accompanying report.

Date: September 9 , 2009

  
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THOMAS A. DEMAKOS, J.H.O.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS: CRIMINAL TERM: JHO-H

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THE PEOPLE OF THE STATE OF NEW YORK	:	<u>REPORT</u>
	:	
- against -	:	BY: THOMAS A. DEMAKOS, J.
	:	
JAMES PETERS and CHRIS STEVENSON,	:	DATE: SEPTEMBER 9, 2009
	:	
	:	INDICTMENT NO.: 2094/06
	:	
Defendants	:	

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**MOTIONS FOR:** *Dunaway/Mapp/Huntley*/hearings as to both defendants

**FOR THE MOTIONS:** Robert Walters, Esq. for defendant Peters  
James L. Galleshaw, Esq. for defendant Stevenson

**OPPOSED:** Ryan Clark, Esq., ADA

Defendants James Peters and Chris Stevenson were indicted for criminal possession of a weapon in the second and third degrees and unlawful possession of marihuana. After the defendants moved to suppress evidence, Judge Aloise ordered a *Dunaway/Mapp/Huntley* hearing as to both defendants. This court conducted the hearing on January 12, January 28, April 21, and June 8, 2009. Police Officers Edward Goutink and Timothy Gentz testified for the People and Kierna Reynolds testified for the defense. The credibility of these witnesses

will be discussed below in the court's findings of fact and conclusions of law.

FINDINGS OF FACT

On April 8, 2006, at about 11:00 P.M., Officer Goutink and his partner, Officer Mikowski, were on routine patrol in the vicinity of 160<sup>th</sup> Street and 77<sup>th</sup> Road. The officers were in plain clothes and driving an unmarked police vehicle. As the officers were proceeding northbound on 160<sup>th</sup> Street, Officer Goutink observed a group of individuals in front of a house and a silver sedan parked against the curb. The officer testified that as he continued northbound, he observed two people in the silver sedan, one in the front and one in the back, and a group of individuals standing to the rear of the vehicle. One of those standing held a clear plastic cup with a colorless liquid which he believed could be alcohol. The officers continued to the next corner, made a "U" turn and approached the sedan. Officer Goutink then testified that when he stopped his vehicle between a car's length and half a car's length from the sedan he saw the occupant in the front driver's side place what appeared to be

a clear plastic bag into the door pocket of the vehicle. He also testified that the occupant behind the driver appeared to be startled and then made a movement with his arm as if putting something away.

Officer Goutink further testified that, at this point, he and his partner exited the police vehicle at virtually the same time that the two sedan occupants, defendants Peters and Stevenson, exited their vehicle and walked back to where the other individuals were standing. While his partner engaged the individuals to inquire as to what they were drinking, Goutink proceeded to the driver's side of the vehicle. He testified that the driver's door was slightly open, that he leaned into the vehicle, shined his flashlight into the door pocket and observed a clear plastic sandwich bag. He stated that he then reached down, retrieved the bag from the pocket, and saw that a quantity of marihuana was inside. He also retrieved a quantity of glassine envelopes from the same location.

Goutink further testified that after retrieving the marihuana and glassine envelopes, he opened the passenger side door in the rear, shined his flashlight inside, and saw the

arm rest slightly opened, and a metallic object inside. He opened the arm rest and observed a handgun, which he retrieved.

Lastly, Officer Goutink testified that he called a back-up unit and that the occupant who had been in the back seat, defendant Stevenson, fled when they arrived. Stevenson was apprehended and placed under arrest. Peters was also placed under arrest.

On cross-examination, Goutink denied that he told the Assistant District Attorney handling intake that evening that the marihuana and gun were removed after defendant Stevenson was apprehended. When he did so, Defendants' Exhibit A (Summary of Crime) was admitted into evidence. The Summary prepared by the ADA stated what Goutink had just denied. The officer also denied telling the ADA that he observed defendant Stevenson place a loaded firearm into the rear seat of the parked vehicle. Defendants' Exhibit B (Arrest Report) was then admitted into evidence. It, too, stated what Goutink had just denied.

Both defendants were taken back to the precinct. At approximately 1:15 A.M. on April 9, 2006, defendant Stevenson

was interviewed by Detective Gentz. The court finds Detective Gentz's testimony fully credible. Gentz first read Stevenson the *Miranda* warnings. Stevenson acknowledged that he understood each of his rights and that he was willing to answer questions. Stevenson signed and initialed the *Miranda* form. A copy of the form was admitted into evidence as People's Exhibit #1.

Following the waiver of his *Miranda* rights, defendant Stevenson made an oral statement, which he then reduced to writing. A copy of the statement was admitted into evidence as People's Exhibit #2.

At the portion of the hearing held on June 8, 2009, defendants called witness Kierna Reynolds to the stand. I find her testimony, which contradicts that of Officer Goutink, fully credible. Ms. Reynolds is 20 years of age, attends LaGuardia College and also is employed as a Sales Associate at the Gap. She has never been arrested. She seemed sincere and intent on providing an accurate account of what she had observed on the night in question. Her testimony is substantially the following.

On April 8, 2006, she was attending a party at a friend's house. At about 11:00 P.M., she went outside because the party was getting crowded. In front of the house, on her side of the street, was a group of females. Across the street were five or six males she knew, two of whom were defendants Peters and Stevenson. A car pulled up and two men got out. They approached the group of men, lined them all up, and patted them down. At that point, she realized that the two were police officers. She observed the police remove something from defendant Peters' pocket and then sit everyone down on the curb. They next went to the sedan that she knew belonged to Peters, opened the doors, and searched the vehicle. She had no way of knowing whether the doors were locked or unlocked, but they were all closed. When the officers began the search, defendant Stevenson ran, but was apprehended and placed in handcuffs. After the search, Peters was also placed in handcuffs.

It should be noted that Officer Goutink denied taking keys from defendant Peters and that the People's complaint indicated that a marihuana cigarette was recovered from

defendant Stevenson's jacket pocket. No mention was made of the cigarette at the hearing.

It should also be noted that the People's bill of particulars erroneously indicates that both defendants held cups of alcohol at the time of the incident. Officer Goutink acknowledged that neither defendant Peters nor defendant Stevenson were seen with cups of alcohol.

#### CONCLUSIONS OF LAW

As indicated above, there are a number of discrepancies among Officer Goutink's testimony, the account he apparently provided to the Assistant District Attorney on the night in question, and the People's bill of particulars. Furthermore, it is implausible that while seated in a vehicle the officer would see another individual similarly seated place a plastic bag in the vehicle's door pocket, particularly as the incident is alleged to have occurred late at night. Considering these facts and the full credibility of the defense witness, the court finds that the defendants were first illegally seized and defendant Peters' vehicle then illegally searched. The physical evidence recovered as a

result of the search is the fruit of such illegality (see *Wong Sun v United States*, 371 US 471 [1963]; *People v May*, 81 NY2d 725 [1992]; *People v Cantor*, 36 NY2d 106 [1975] *People v Andrades*, 219 AD2d 908 [1995], lv denied 87 NY2d 897 [1995]; *People v Gittens*, 110 AD2d 908 [1985]).

With respect to defendant Stevenson's statement,<sup>1</sup> the People bear the burden of demonstrating that it was acquired by means sufficiently distinguished from the illegality as to be purged of it (see *Brown v Illinois*, 422 US 590, 604 [1975]; *People v Johnson*, 66 NY2d 398, 407 [1985]). The relevant considerations are the temporal proximity of the illegality and the statement, the presence of intervening circumstances and, particularly, the purpose and flagrancy of the official misconduct (*id.*; see also *People v Harris*, 77 NY2d 434, 441 [1991]). Here, Stevenson's statement was made only about an hour and 45 minutes after his arrest (see *People v Harris*, 77 NY2d at 435). He had, however, received the *Miranda* warnings from a different police officer and waived his rights before making the statement. The administration of

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While a Huntley hearing was also ordered as to defendant Peters, no CPL 710.30 notice was served and no testimony adduced as to any statement made by him.

Miranda warnings is an important, but not dispositive, factor in determining whether the statement was obtained by exploitation of the illegality (see *Dunaway v New York*, 442 US 200, 217 [1979]; *Brown v Illinois*, 422 US at 603; *People v Conyers*, 68 NY2d 982, 983 [1986]; *People v Waters*, 259 AD2d 642 [1999]; *People v Gunderson*, 255 AD2d 454 [1998], appeal withdrawn 93 NY2d 853 [1999]). The causal chain between the illegalities and Stevenson's making of the statement was not broken by a significant intervening event such as the defendant being presented with incriminatory evidence obtained by untainted means ( see *Dunaway v New York*, 442 US at 218-219; *People v Milaski*, 62 NY2d 147 [1984]; *People v Waters*, supra; *People v Gunderson*, supra; cf. *People v Rogers*, 52 NY2d 527, 533-534 [1981]; *People v Thompson*, 296 AD2d 513 [2002], lv denied 98 NY2d 772 [2002]). Furthermore, there was a strong element of purposefulness in the officers' conduct. It is, perhaps, understandable that given the lengthy time gap between the events at issue and the officer's testimony, such testimony would contain a number of discrepancies which rendered it not credible. As that is the case, however, the court is left with the fully credible account of the defense

witness. According to that account, the defendants were lined up and frisked along with several other young black males on what was apparently nothing more than a hunch that alcoholic beverages and perhaps more were being consumed and/or carried or sold outside a party. They were thereafter detained while defendant Peters' vehicle was improperly searched in the hope that contraband would be found. The exclusionary rule was designed to discourage such conduct from occurring again (see *Dunaway v New York*, 442 US at 218-219).

Accordingly, the court is of the opinion that the defendants' motions to suppress physical evidence and statements should be granted.

  
THOMAS A. DEMAKOS, J.H.O.