SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND CRIMINAL TERM PART 15
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THE PEOPLE OF THE STATE OF NEW YORK,

-against- **INDICTMENT NO. 255/2015**

DECISION AND ORDER

SHONNTAY JORDAN,

Defendant.
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After a hearing, this Court granted, in part, defendant's motion to suppress certain items seized by police from defendant's bag, i.e. 240 glassine envelopes purportedly containing heroin. In sum, this Court concluded that these items were seized during an inventory search of defendant's bag after defendant's arrest, but in the absence of any evidence that such inventory was conducted in accordance with established procedures, suppression was mandated (People v. Gomez, 13 NY 3d 6).

The People, by written Notice of Motion dated April 4, 2016, now move to reargue that result. The People may not have been given adequate time to respond to defendant's supporting memorandum dated March 14, 2016; The People were given two weeks to respond to defendant's written submission, which itself was nearly three weeks late. Consequently, the Court exercises its discretion and grants the motion to reargue (see, Bodek v. Appell, 36 AD 3d 846 (2d Dept.)). Upon re-argument, the Court reverses, and denies suppression of the search of the contents of the bag marked "DB", but for reasons advanced by neither the People nor the defendant.

The salient facts were set forth in this Court's March 16, 2016 Decision and Order, but they bear repeating here.

Defendant was seated in the rear passenger seat of a Ford Expedition, which was observed by the sole witness, P.O. Leonid Shatkin, whom the Court found credible, to be standing at a bus stop in front of 361 Grandview Avenue, Staten Island, New York. Shatkin was the passenger in an unmarked police vehicle, which pulled up parallel to the Expedition upon its observation at the bus stop. He began to exit his vehicle and approached the Expedition. As he did so, he noticed defendant opening the rear door and begin to exit the vehicle, to the street side. At that point, the witness was able to view two glassines of substances he believed to be heroin, based on his training and experience in its appearance and packaging. They were seen on the floor of the rear passenger compartment. As the witness was still walking up to the Expedition, defendant started to exit it.

The witness also observed the handbag in question on the seat next to defendant, where it remained at the time of the arrest; she did not exit the vehicle with the bag. The witness testified that the bag was transported to the precinct by other officers, where he searched its contents and vouchered it. As a result of the search, 240 more glassines of purported heroin were discovered, plus two IDs and a cell phone.

By exiting the vehicle and leaving the handbag behind, the defendant abandoned it, for purposes of determining whether the search thereof was permissible. A warrantless search of abandoned property does not constitute an unreasonable search and does not violate the Fourth Amendment (U.S. v. Hoey, 983 F. 2d 890, 892, citing Abel v. U.S. 362 U.S. 217, 241). In New York, where an individual abandons property, there is no search or seizure (People v. Hogya, 80 AD 2d 621 (2d Dept.), app. dism. 56 N.Y. 2d 602). One's intent to abandon may be inferred from words, acts, other objective facts, or relevant circumstances (U.S. v. Hoey, supra, at 892, citing U.S. v. Colbert, 474 F. 2d 174, 176). The issue is not abandonment in a property right sense, but whether the individual has relinquished any reasonable expectation of privacy by leaving it (Id.).

In looking at the acts evincing an intent to abandon, the Courts should look to whether it was an "independent act involving a calculated risk". (People v. Boodle, 47 NY 2d 398, cert den. 444 U.S. 969) and not a response to unlawful police conduct (People v. Eldridge, 178 AD 2d 609 (2d Dept.)).

Here, the risk facing defendant was the risk that the police would seize her bag from her and search it and discover the glassine envelopes. Ironically, she would have retained a higher expectation of privacy had she exited the vehicle holding that bag. She exited the vehicle voluntarily, sans the bag, notwithstanding her right and opportunity to take it with her. No doubt that defendant had a reasonable expectation of privacy in her bag carried on her person (New Jersey v. T.L.O., 469 U.S. 325, 337), but that expectation of privacy was voluntarily surrendered when she exited the vehicle without it, risking the possibility of its accessibility to police or other passers-by. Such access was a real possibility, given that the Expedition was apparently not hers, and that the rear door was open. "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection" (Katz v. United States, 389 U.S. 347, 351.

An abandonment will be found when the time, however brief, is sufficient to permit defendant to formulate a strategy to rid herself of incriminating evidence (People v. Rosser, 150 AD 2d 911, 913, lv. den. 74 NY 2d 746, citing People v. Boodle, supra, at 404; see also, People v. Jackson, 251 AD 2d 820). Her desire to rid herself of the incriminating evidence was perhaps intensified when it became evident that P.O. Shatkin had just observed two glassines on the car floor in plain view.

Even brief relinquishment of control, and short distance between person and object, may warrant a finding that defendant made a conscious decision to abandon property. For example, in People v. Oliver, 39 AD 3d 880 (2d Dept.), defendant was found to have abandoned his knapsack

when he left it on the floor of a Chinese takeout restaurant and went outside to talk to police. In United States v. Anderson, 2009 WL 3698435 (U.S.D.C.,E.D. Missouri), defendant was seen entering a station-wagon style vehicle, but "did not keep (her) purse with her", but instead placed it in the rear storage compartment area, and sat in the front passenger seat.

Two other factors are noted. First, although many of the reported cases involving searches of bags and the like (including the Anderson case, supra) involve defendants who affirmatively denied ownership thereof, as demonstrative of an intent to abandon, such disclaimers are not required (United States v. Liu, 180 F. 3d 957, 960). Further, such abandonment must not be the result of, or coerced by, illegal police conduct (see, People v. Wilson, 201 AD 2d 399). It is beyond discussion that , at bar, the police were justified in approaching the Ford Expedition, having observed it standing at a bus stop marked by signs prohibiting same (NYC Rules and Regulations, Title 34, § 4-08 (a)).

For these reasons, the Court must conclude from the evidence adduced that defendant lost standing to challenge the search of the subject bag, (see, People v. Oliver, supra) and that as a result, police had authority to search the contents at the precinct, after defendant's arrest, irrespective of whether the search is to be characterized as a search incident to a lawful arrest, or an inventory search.

In view of the foregoing, the Court need not address the other legal issues raised by the parties.

DATED: May 26, 2016

Wayne M. Ozzi (J.S.C.)