

FILED by Arlington County Circuit Court

02/19/2022 12:26:52 PM

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

_____)
COMMONWEALTH OF VIRGINIA,)
))
))
v.))
))
FRANCIS ROSE,))
))
Defendant.))
_____)

Case No.: **CR21-511**
CR21-516
CR21-517
CR21-738

BRIEF IN SUPPORT OF MOTION TO SUPPRESS FRUITS
OF UNCONSTITUTIONAL SEARCH

COMES NOW, FRANCIS ROSE, by and through counsel, respectfully moves this Honorable Court to suppress any illegal fruits of the unconstitutional search of his bag and his person.

STATEMENT OF FACTS

1. Francis Rose is charged with possession of cocaine, possession with intent to distribute fentanyl, possession of a firearm while possessing with intent to distribute heroin, and possession of a firearm by a convicted non-violent felon.
2. On October 17, 2020, Mr. Rose was a passenger in a car that was stopped because the registered owner/driver, [REDACTED] had a suspended license. As Officer Bane approached the car and began speaking with Ms. Aleshire, he smelled an odor of marijuana coming from the vehicle.
3. Officer Bane ran Mr. Rose through NCIC and learned that he was on probation and known to abuse drugs. The officer ordered Ms. Aleshire and Mr. Rose out of the vehicle and directed Mr. Rose to leave his cross-body bag that was on his person in the car. Officer Gatto did not smell marijuana on Mr. Rose's person when he got out of the car.

4. Police found a firearm in the cross-body bag and marijuana in Ms. Aleshire's purse that was located in the back seat.

5. Ms. Aleshire and Mr. Rose were both placed into handcuffs and Mr. Rose was placed under arrest for possession of a firearm. Mr. Rose was searched incident to arrest and police found a small quantity of heroin and cocaine on his person. Ms. Aleshire was neither patted down nor searched.

GROUND FOR SUPPRESSION OF EVIDENCE

6. The police had no authority to order Mr. Rose to leave his cross-body bag in the vehicle because the bag was on his person and only the vehicle smelled of marijuana. The Court of Appeals found a bag that a person was holding was on his person because "the bag was appended to or intimately connected to his person." *Edwards v. Commonwealth*, 568 S.E.2d 454, 457, 38 Va.App. 823 (2002).



7. The police had no legal basis to search the bag because by that time, they had determined that Mr. Rose did not smell of marijuana and the bag had been on his person.

8. When the police found the gun in Mr. Rose's bag, he was placed under arrest, searched incident to that arrest, and controlled substances were recovered from his person. Absent the gun being recovered from the unlawful search of the bag, the police had no probable cause to search his person nor reasonable articulable suspicion to conduct a Terry pat down. "The narrow scope of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though the person happens to be on premises where an authorized narcotics search is taking place." *Lett v. Commonwealth*, 372 S.E. 2d 195, 197, 7 Va.App. 191 (1988).

9. Although “suspicion of narcotics distribution gives rise to an inference of dangerousness” *Roberts v. Commonwealth*, 684 S.E.2d 824, 828, 55 Va.App. 146 (2009), police had information that Mr. Rose was known to abuse drugs, not sell them. Had Mr. Rose been permitted to keep his bag on his person when he was ordered out of the car, the police still would not have had a basis to search him or even pat him down because they had no information that he was armed and dangerous.

WHEREFORE Defendant Francis Rose requests that the Court grant his Motion to Suppress the search of his bag and his person and exclude any evidence seized pursuant to that search.


Respectfully submitted,


Molly Newton
Newton Turner PLLC


Counsel for Defendant Francis Rose

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Suppress was delivered via electronic mail on this 19th day of February, 2022 to Katherine Milane and judges chambers.


Molly H. Newton