

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

People v. Small

2025 NY Slip Op 06665 (App. Div. 1st Dep't Dec. 2 2025) · No. Ind No. 70051/22; Appeal No. 5247; Case No. 2022-03391 · Decided December 2, 2025

SUMMARY

The New York Appellate Division, First Department held that police lacked sufficient suspicion to initiate a common-law inquiry and subsequently seize and frisk Trevon Small based on his crossing the street, passing an unidentified object, and an alleged shift of weight in his jacket pocket. The court granted suppression, reversed the judgment of conviction for attempted criminal possession of a weapon in the second degree, and dismissed the indictment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Moulton, J.; Gesmer, J.; Rosado, J.; Hagler, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	December 2, 2025
DOCKET	Ind No. 70051/22; Appeal No. 5247; Case No. 2022-03391
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, convicting him upon his plea of attempted criminal possession of a weapon in the second degree and sentencing him to six months in jail and five years of probation. The appeal challenged the denial of defendant's motion to suppress the gun and statements to police, as well as the excessiveness of the sentence.
STANDARD OF REVIEW	The Appellate Division reviewed the suppression ruling on the law and the facts, declined to disturb the motion court's credibility determinations, and independently evaluated whether the police conduct was justified under the totality of the circumstances, including the body-worn-camera footage.

PRECEDENTIAL VALUE	Published; precedential New York Appellate Division opinion, uncorrected and subject to revision before publication in the Official Reports.
PARTIES	Trevon Small v. The People of the State of New York

TOPICS

suppression of evidence search and seizure criminal procedure fourth amendment appellate procedure

PRACTICE AREAS

criminal procedure constitutional criminal procedure evidence

QUESTIONS PRESENTED

1. Whether the officers had the founded suspicion required for a level-two common-law inquiry based on defendant's street-crossing, repeated glances, and transfer of an unidentified object to a woman.
2. Whether the officers had reasonable suspicion that defendant was armed and dangerous sufficient to justify a level-three seizure, frisk, and search after defendant complied with the request to show his hands.
3. Whether suppression of the gun and statements required vacatur of the conviction and dismissal of the indictment.

HOLDINGS

1. The totality of the circumstances did not provide a founded suspicion that criminality was afoot sufficient to justify a level-two common-law inquiry.
2. The officers were not justified in escalating the encounter to a level-three seizure or frisk based merely on defendant's turning his body and the officer's asserted observation of a shift of weight in his jacket pocket.
3. Because the gun and defendant's statements were inadmissible and no other admissible evidence could establish the crime, the judgment of conviction had to be vacated and the indictment dismissed.

KEY QUOTATIONS

*“the totality of the circumstances did not give rise to the level of suspicion required for a common-law inquiry” (*1)*

*“Even if there had been a bulge in defendant's pocket, that observation alone does not imply a reasonable conclusion that defendant was armed” (*1)*

FACTUAL BACKGROUND

Police officers observed defendant cross the street after looking at them and later saw him hand a small, unidentified object to a woman. The object could have been anything, the woman did not give defendant money,

and no drugs were recovered. Officers approached defendant, asked him to remove his hand from his jacket pocket, and then restrained and frisked him after he complied and turned his body; they claimed to have observed a shift of weight and felt a gun, which they recovered from his pocket. Body-worn-camera footage showed near-immediate compliance, defendant's empty hands in view, no significant bulge, and the officers quickly placing him in handcuffs.

PROCEDURAL HISTORY

The Supreme Court denied defendant's suppression motion after finding that police had sufficient grounds to approach and question him and later to frisk him based on the circumstances of an apparent hand-to-hand transfer, the high-crime-area testimony, and an asserted shift of weight in defendant's jacket pocket. Defendant was convicted and sentenced after the suppression ruling. The Appellate Division reversed on the law and the facts, granted suppression, and dismissed the indictment because the remaining evidence could not support a conviction.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered; the suppression motion was granted and the indictment was dismissed.

CASES CITED

- People v. Gneco, 234 AD3d 577, 578 (1st Dep't 2025), lv denied 43 NY3d 1008 (2025)
- People v. De Bour, 40 NY2d 210, 216, 223 (1976)
- People v. Mejias, 63 AD3d 526, 526-527 (1st Dep't 2009), lv denied 13 NY3d 747 (2009)
- People v. Walker, 237 AD3d 102, 107 (1st Dep't 2025)
- People v. Batista, 88 NY2d 650, 654 (1996)
- People v. Rodriguez, 41 NY3d 1, 14 (2023)

OPINION

People v. Small 2025 NY Slip Op 06665

PER CURIAM.

People v Small (2025 NY Slip Op 06665) People v Small 2025 NY Slip Op 06665 Decided on December 02, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: December 02, 2025 Before: Manzanet-Daniels, J.P., Moulton, Gesmer, Rosado, Hagler, JJ. Ind No. 70051/22|Appeal No. 5247|Case No. 2022-03391| [*1]The People of the State of New York, Respondent, v Trevon Small, Defendant-Appellant. Twyla Carter, The Legal Aid Society, New York (Thomas Palumbo of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Ethan M. Solomon of

counsel), for respondent. Judgment, Supreme Court, New York County (Laura Ward, J., at suppression hearing; Neil Ross, J., at plea and sentencing), rendered July 15, 2022, convicting defendant of attempted criminal possession of a weapon in the second degree, and sentencing him to a jail term of six months and five years of probation, unanimously reversed, on the law and the facts, the motion to suppress granted, and the indictment dismissed. Shortly before 10:30 p.m. on the night of January 2, 2022, two uniformed police officers in an unmarked car were patrolling the north side of 112th Street between Third and Lexington Avenues in Manhattan. One of the officers, who was standing outside the car, saw defendant and a woman walking toward Third Avenue on the same side of the street as the car. The officer observed defendant look at him and then cross to the south side of 112th Street. Defendant looked at the officer a few more times and adjusted his pants while crossing with the woman back to the north side of the street. At the later suppression hearing, one of the officers testified that defendant crossed the street to avoid the patrol car. The two officers proceeded to follow defendant and the woman in the unmarked car. While the officers were following defendant in the car, they saw him hand a small, unidentified object to the woman. The officer later described defendant handing the object to the woman as a "hand-to-hand motion usually consistent with narcotics." Notably, the other officer testified that the object was "plasticity" but also stated that it was unclear what the object was and "could have been anything," including money or a piece of gum. The officers waited in the car to see if the woman would hand money to defendant, as would ordinarily take place in a drug sale, but she never did. The woman was not searched, and no drugs were ever recovered from defendant upon his arrest. The officers subsequently approached defendant, who had his right hand by his side and his left inside the pocket of his puffer jacket. One of the officers testified to asking defendant to take his hand out of his pocket. According to the officer, defendant asked the officer why, to which the officer responded that the request was "for [his] safety," claiming that "it's a very high crime area" and "very violent." The officer further testified that defendant did not immediately comply, so the officer asked him one more time, and he took his hand out of the pocket and started to lean toward his left side as if "he was trying to run . . . or walk away." The officer testified that he observed that defendant's left pocket had a heavy object in it and there was a "shift of weight." The officer testified that he was concerned defendant could "possibly be armed" because he was trying to conceal the object in his left pocket and was "looking away." The officers then grabbed defendant by his wrists, patted him down, and purportedly felt a gun on his left side. The officers proceeded to arrest and search defendant, finding a gun in his left jacket pocket. Body-worn camera footage of the encounter, which lasted a matter of seconds, shows that when the officer asked defendant to remove his hand from his jacket pockets, he, although appearing to make a questioning gesture, almost immediately complied, removing his hand from his pocket and showing his empty hands to police. The video, which lacks audio until the officers placed defendant in handcuffs, also shows defendant turning from one officer to another, at which point the officers grabbed him and quickly placed him in handcuffs. The officer who testified to

questioning defendant during the encounter and observing the heavy object in the left pocket of his jacket is seen on defendant's right side in the video. While the video is dark, we agree with the motion court, no significant bulge can be seen from the left side of defendant's jacket. Supreme Court denied defendant's motion to suppress the gun, noting in its ruling that the issue was "a very close question" that turned on the court's interpretation of the officers' actions. The court deemed the officers' testimony credible and found that they had sufficient probable cause to approach and question defendant based on the testimony that the object that defendant handed to the woman appeared to be small and plastic-covered, "which was similar to things that [the officer] had seen in other narcotics arrests." The court gave credence to the officer's testimony that the officers were in "a high crime area." [FN1] Regarding the officer's testimony about observing a "shift of weight" in the left pocket of defendant's jacket, the court stated that when looking at the body-worn camera footage, it was "not sure" that it could see such a movement but that the video was taken from a different angle than that of the officer who made that observation. The court concluded that the shift in weight and defendant turning away from the officers gave police "sufficient suspicion to at least pat defendant down," and, with the officer's testimony that he felt a gun, a right to search him. Defendant's suppression motion should have been granted. Although we decline to disturb the court's credibility determinations (*People v Gneco* , 234 AD3d 577 , 578 [1st Dept 2025], lv denied 43 NY3d 1008 [2025]), notwithstanding our concerns about discrepancies between the officers' testimony and what is shown in the body-worn camera footage, the initial inquiry and subsequent seizure were still unjustified. Even crediting the officers' testimony that their suspicion was aroused when defendant and the woman crossed the street to avoid their patrol car, and then they later observed him pass a small object to the woman, the totality of the circumstances did not give rise to the level of suspicion required for a common-law inquiry (*People v De Bour* , 40 NY2d 210, 223 [1976]). Neither officer could identify what object was passed from defendant to the woman — one testified that "it could have been anything" — nor otherwise articulate why, from this innocuous behavior, they had a "founded suspicion that criminality was afoot" to warrant a level two encounter (*id.* at 216, 223). The police were not responding to a call, there was ambiguous testimony as to whether the encounter took place in a high crime area, and the woman did not give defendant money in exchange or immediately leave "without any kind social interaction" (*cf.* *People v Mejias* , 63 AD3d 526, 526-527 [1st Dept 2009], lv denied 13 NY3d 747 [2009]). Similarly, this Court's review of the record, including the body-worn camera video recording of the encounter, indicates that the police were not justified in their escalation to the level three seizure in restraining defendant's wrists simply because, after he was detained, and defendant complied with the officers' request that he show his hands, he turned his body away from one officer, who observed a "shift in weight" in defendant's jacket pocket (*see* *People v Walker* , 237 AD3d 102 , 107 [1st Dept 2025]). Even if there had been a bulge in defendant's pocket, that observation alone does not imply a reasonable conclusion that defendant was armed (*id.*). Defendant's hands were in clear view when the officers seized him, and nothing in the record

indicates that defendant was armed or posed a threat to safety to justify him being frisked (see People v Batista , 88 NY2d 650, 654 [1996]). Since no other admissible evidence exists to establish the crime, and the prosecution would be unable to secure a conviction on criminal possession without the gun recovered from defendant and his statements to the police, the judgment of conviction must be vacated, and the indictment dismissed (see People v Rodriguez , 41 NY3d 1 , 14 [2023]). In view of our determination, we need not reach defendant's alternative argument that his sentence is excessive and should be reduced. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 2, 2025 Footnotes Footnote 1: The court also stated that the officer testified that the area was "known for robberies." However, the officer described the area only as "very high crime" and "very violent," and he expressly told defense counsel during cross-examination that he was not investigating robberies in the area.

PER CURIAM.

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