

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)