

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

People v. Alberto

2026 NY Slip Op 01976 (N.Y. Ct. App. 2026) · No. 2022-08973 · Decided April 1, 2026

SUMMARY

The Appellate Division, Second Department, reversed the defendant's judgment of conviction for criminal possession of a weapon in the second degree. The court held that the police lacked reasonable suspicion to pursue the defendant, granted suppression of the firearm, dismissed the indictment insofar as asserted against him, and remitted the matter for proceedings under CPL 160.50.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; Paul Wooten, J.; Janice A. Taylor, J.; Elena Goldberg Velazquez, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 1, 2026
DOCKET	2022-08973
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him, after a jury trial, of criminal possession of a weapon in the second degree and imposing sentence. The appeal also reviewed the denial, after a suppression hearing, of defendant's motion to suppress physical evidence.
STANDARD OF REVIEW	On a motion to suppress physical evidence, the People bear the burden of going forward initially to establish the legality of police conduct. The Appellate Division reviewed the suppression determination as a matter of law.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Andre Alberto v. The People of the State of New York

TOPICS

suppression of evidence

fourth amendment

search and seizure

criminal procedure

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the police had reasonable suspicion that defendant had committed, was committing, or was about to commit a crime sufficient to justify pursuit.
2. Whether the firearm recovered after the pursuit was the product of an unlawful pursuit and therefore subject to suppression.
3. Whether defendant's conviction had to be dismissed after suppression of the firearm left legally insufficient evidence to support the weapons-possession count.

HOLDINGS

1. The police lacked reasonable suspicion to pursue defendant because his flight, the civilians' pursuit, the unidentified accusation, and the officer's vague observation of a physical altercation did not constitute specific circumstances indicating criminal activity.
2. The firearm was subject to suppression because its discovery after defendant was brought to the ground was precipitated by the unlawful pursuit and was not attenuated from that illegality.
3. The weapons-possession count had to be dismissed because, without the firearm, the conviction was not supported by legally sufficient evidence beyond a reasonable doubt; because the jury acquitted defendant of the only other count, the indictment was dismissed insofar as asserted against him.

KEY QUOTATIONS

"In order to justify police pursuit, the officers must have reasonable suspicion that a crime has been, is being, or is about to be committed" ([*1])

"A suspect's flight alone or in conjunction with equivocal circumstances that might suggest a police request for information is insufficient to justify pursuit" ([*1])

"However, a defendant's flight plus 'other specific circumstances indicating that the suspect may be engaged in criminal activity, may give rise to reasonable suspicion, the necessary predicate for police pursuit'" ([*1])

"Thus, Hain's observations did not constitute specific circumstances indicative of criminal activity so as to establish the reasonable suspicion necessary to lawfully pursue the defendant, even when coupled with the defendant's flight" ([*1])

FACTUAL BACKGROUND

Police officers investigating an early-morning homicide observed civilians chasing defendant in a Brooklyn housing development. A female voice said, "that's him, he's getting away, grab him," and an officer later observed defendant and a woman tussling, but the officer could not determine whether defendant was attacking

the woman or defending himself. The pursuing officer was not in uniform and did not identify himself as a police officer before pursuing defendant; after defendant was apprehended, officers recovered a firearm from his waist.

PROCEDURAL HISTORY

The Supreme Court, Kings County, denied defendant's motion to suppress a firearm recovered after police pursued and apprehended him. Following a jury trial, defendant was convicted of criminal possession of a weapon in the second degree. The Appellate Division reversed, granted suppression, dismissed the indictment insofar as asserted against defendant, and remitted for proceedings consistent with CPL 160.50.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to Supreme Court, Kings County, for further proceedings consistent with CPL 160.50, including entry of an appropriate order in that court's discretion.

CASES CITED

- People v. Johnson, 243 AD3d 679, 680
- People v. Rhames, 196 AD3d 510, 511-512
- People v. Sidbury, 237 AD3d 975, 976
- People v. Leon, 222 AD3d 998, 999-1000
- People v. Cantor, 36 NY2d 106, 112-113
- People v. Ravenell, 175 AD3d 1437, 1439
- People v. Gomez, 205 AD3d 1049, 1050
- People v. Reyes, 69 AD3d 523, 527
- People v. Vazquez, 211 AD3d 1052, 1054
- People v. Austin, 203 AD3d 732, 738

OPINION

PER CURIAM.

<div>People v Alberto - 2026 NY Slip Op 01976 <div> skip to main content </div> <div> <p>It appears you are using Adblock. Please disable Adblock to best experience our website.</p> </div> <div> <header> <div> </div> <div> Law Reporting
Bureau Thomas J.K.

able to apprehend the [defendant]," and "[w]e went to the ground" and "were fighting for his hands, to get him rear cuffed."

Hain then heard the detective yell that the defendant had a gun. Hain indicated that they handcuffed the defendant, rolled the defendant over onto his side, and Hain "felt what appeared to be the butt of a gun" by the defendant's waist. Hain removed the object which he observed to be a firearm wrapped inside of a bandana.

At the close of the hearing, the Supreme Court found, among other things, that Hain had reasonable suspicion to detain and pursue the defendant, and the court denied that branch of the defendant's omnibus motion which was to suppress the firearm recovered from his person.

Following a jury trial, the defendant was convicted of criminal possession of a weapon in the second degree.

"On a motion to suppress physical evidence, the People bear the burden of going forward to establish the legality of police conduct in the first instance" (*People v Johnson*, 243 AD3d 679, 680, quoting *People v Rhames*, 196 AD3d 510, 511-512). "In order to justify police pursuit, the officers must have reasonable suspicion that a crime has been, is being, or is about to be committed" (*People v Sidbury*, 237 AD3d 975, 976 [internal quotation marks omitted], quoting *People v Leon*, 222 AD3d 998, 999).

"Reasonable suspicion exists where there is a 'quantum of knowledge sufficient to induce an ordinarily prudent and cautious man [or woman] under the circumstances to believe criminal activity is at hand'" (*People v Leon*, 222 AD3d at 999, quoting *People v Cantor*, 36 NY2d 106, 112-113). "A suspect's flight alone or in conjunction with equivocal circumstances that might suggest a police request for information is insufficient to justify pursuit" (*People v Sidbury*, 237 AD3d at 976 [internal quotation marks omitted], quoting *People v Leon*, 222 AD3d at 999).

"However, a defendant's flight plus 'other specific circumstances indicating that the suspect may be engaged in criminal activity, may give rise to reasonable suspicion, the necessary predicate for police pursuit'" (*People v Sidbury*, 237 AD3d at 976 [internal quotation marks omitted], quoting *People v Ravenell*, 175 AD3d 1437, 1439).

Here, the People failed to meet their burden of establishing the legality of the pursuit of the defendant, as the police lacked reasonable suspicion that the defendant had committed, was committing, or was about to commit a crime (*see* *People v Ravenell*, 175 AD3d at 1439).

Neither Hain's observation of the defendant running away from a "group of civilians" chasing him, nor the female voice saying "that's him, he's getting away, grab him," without reference to any specific acts, were sufficient to confer reasonable suspicion that the defendant was engaged in criminal activity, as opposed to the defendant being the victim of criminal activity or having no connection to any criminal activity (*see* *People v Gomez*, 205 AD3d 1049, 1050; *People v Reyes*, 69 AD3d 523, 527).

Hain acknowledged that "I wasn't sure exactly what was going on at the time," and that the group could have been chasing the defendant "for anything." Further, Hain's vague testimony that when the group caught up to the defendant, he observed the defendant and a female individual "engaged in some sort of physical altercation," which he described as "tussling, pulling back and forth at each other," was insufficient, absent any details, to satisfy the People's burden of establishing reasonable suspicion that the defendant was engaged in criminal activity.

Hain acknowledged that "I don't know if [the defendant] was defending himself," and he did not testify that the defendant ever struck the female individual or engaged in any conduct constituting an assault or other criminal activity.

Therefore, it cannot be determined from Hain's testimony elicited at the hearing whether the defendant was merely trying to pull away from the female individual to continue running away after she and the group caught up to him.

Thus, Hain's observations did not constitute specific circumstances indicative of criminal activity so as to establish the reasonable suspicion necessary to lawfully pursue the defendant, even when coupled with the defendant's flight (*see* *People v Leon*, 222 AD3d at 1000).

The record reflects that Hain was not in uniform and did not identify himself as a police officer or make any instruction with which the defendant refused to comply prior to pursuing the defendant (*cf.* *People v Sidbury*, 237 AD3d 975).

Thus, the defendant had no way of knowing that he was fleeing from the police, as opposed to members of the group chasing him. Since the police lacked reasonable suspicion to pursue the defendant, the pursuit was unlawful, and the discovery of the firearm after the defendant was brought to the ground by the police was precipitated by the illegality and not attenuated from it (*see* *People v Ravenell*, 175 AD3d at 1439).

Accordingly, the Supreme Court should have granted that branch of the defendant's omnibus motion which was to suppress the firearm.

Without this evidence, the defendant's conviction of criminal possession of a weapon in the second degree was not supported by legally sufficient evidence to establish his guilt of that count beyond a reasonable doubt.

Accordingly, the count of the indictment charging the defendant with that offense must be dismissed (*see* *People v Vazquez*, 211 AD3d 1052, 1054). Further, since the jury acquitted the defendant of the only count in the indictment charged against him not pertaining to possession of the firearm, the indictment *2 must be dismissed insofar as asserted against the defendant, and the matter remitted to the Supreme Court, Kings County, for the purpose of entering an order in its discretion pursuant to CPL 160.50 (*see* *People v Austin*, 203 AD3d 732, 738).

In light of our determination, we need not reach the

defendant's remaining contentions.

BRATHWAITE NELSON, J.P., WOOTEN, TAYLOR and GOLDBERG VELAZQUEZ, JJ., concur.

ENTER:

Darrell M. Joseph

Clerk of the Court

Court Decisions

All Court Decisions Official Reports Service Bound Volumes Decision Search

Resources

RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index

About

About the Law Reporting Bureau About our Operations Contact Us Twitter

Quick Contact Info

17 Lodge Street

Albany, NY 12207

Phone: (518) 453-6900

Links to or from other sites do not signify endorsement or relationship with them.