

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

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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