

2018 WL 4905350
Supreme Court, Appellate Division,
Second Department, New York.

The PEOPLE, etc., respondent,

v.

Dillon BOX, appellant.

2015–01507

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(Ind. No. 1916/13)

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Argued—May 18, 2018

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October 10, 2018

Attorneys and Law Firms

Paul Skip Laisure, New York, N.Y. (William Kastin of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Kathryn E. Mullen of counsel), for respondent.

SHERI S. ROMAN, J.P., SANDRA L. SGROI, JOSEPH J. MALTESE, HECTOR D. LASALLE, JJ.

DECISION & ORDER

*1 Appeal by the defendant from a judgment of the Supreme Court, Queens County (Barry Kron, J.), rendered January 30, 2015, convicting him of criminal possession of a firearm, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing (Thomas A. Demakos, J.H.O.), of those branches of the defendant's omnibus motion which were to suppress physical evidence and a statement he made to law enforcement officials.

ORDERED that the judgment is affirmed.

The defendant was seated in the driver's seat of a parked vehicle owned by his mother when police officers seized a gun from the open trunk of the vehicle and subsequently arrested the defendant. The officers saw the gun in the trunk after the officers approached to request information from the codefendant, whose entire upper body had been inside the trunk at the time the officers stopped to inquire. The Supreme Court denied those branches of the defendant's ensuing omnibus motion which were to suppress the gun and a subsequent statement the defendant made to law enforcement officials. The defendant thereafter was convicted of criminal possession of a firearm, and he challenges the suppression ruling on appeal.

Contrary to the defendant's contention, the police officers had an objective, credible reason, although not necessarily indicative of criminality, to approach the vehicle and request information (see *People v. De Bour*, 40 N.Y.2d 210, 223, 386 N.Y.S.2d 375, 352 N.E.2d 562; *People v. Jennings*, 129 A.D.3d 1103, 1104, 12 N.Y.S.3d 275), after which, it is undisputed, they observed the gun in plain view (see *People v. Brown*, 96 N.Y.2d 80, 88, 725 N.Y.S.2d 601, 749 N.E.2d 170). Accordingly, the Supreme Court properly declined to suppress the physical evidence and subsequent statement.

The People's remaining contention is academic, and, in any event, not properly before the Court (see *People v. LaFontaine*, 92 N.Y.2d 470, 682 N.Y.S.2d 671, 705 N.E.2d 663).

ROMAN, J.P., SGROI, MALTESE and LASALLE, JJ., concur.

All Citations

--- N.Y.S.3d ----, 2018 WL 4905350, 2018 N.Y. Slip Op. 06760