

2018 WL 6187073
Supreme Court, Appellate Division,
Second Department, New York.

The PEOPLE, etc., respondent,
v.
Jonathan JAMES, appellant.

2017-08757

|
(Ind. No. 335/16)

|
Submitted - October 23, 2018

|
November 28, 2018

Synopsis

Background: Following denial of motion to **suppress** physical evidence in the Supreme Court, Queens County, [Douglas S. Wong, J.](#), and after a nonjury trial, defendant was convicted in the Supreme Court, Queens County, [John B. Latella, J.](#), of criminal possession of a weapon in the second and third degree. Defendant appealed.

[Holding:] The Supreme Court, Appellate Division, held that police officers had reasonable suspicion to stop and detain defendant.

Affirmed.

West Headnotes (5)

[1] Arrest



Police officers may stop or detain an individual if they have information which provides them with a reasonable suspicion that a crime has been, is being, or is about to be committed. [U.S. Const. Amend. 4.](#)

[Cases that cite this headnote](#)

[2] Arrest



“Reasonable suspicion,” to support a forcible stop and detention, is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand. [U.S. Const. Amend. 4.](#)

[Cases that cite this headnote](#)

[3] Arrest



In determining whether a police officer possessed reasonable suspicion to support a forcible stop and detention, a court must evaluate the totality of the circumstances. [U.S. Const. Amend. 4.](#)

[Cases that cite this headnote](#)

[4] Arrest



A police officer generally has reasonable suspicion to stop and detain an individual where the individual matches the description of a perpetrator's appearance and is located close to the crime scene, both temporally and geographically. [U.S. Const. Amend. 4.](#)

[Cases that cite this headnote](#)

[5] Arrest



Police officers had reasonable suspicion to stop and detain defendant, which lead to recovery of a weapon on defendant's person, in prosecution for criminal possession of a weapon in the second and third degree, where victim of shooting provided description of the shooter and indicated he had boarded a public bus, and within reasonable proximity to the scene of the shooting, officers observed defendant riding a public bus, whose clothing matched victim's description. [U.S. Const. Amend. 4.](#)

[Cases that cite this headnote](#)

Appeal by the defendant from a judgment of the Supreme Court, Queens County (John B. Latella, J.), rendered August 10, 2017, convicting him of criminal possession of a weapon in the second degree (two counts) and criminal possession of a weapon in the third degree, after a nonjury trial, and imposing sentence. The appeal brings up for review the denial, after a hearing (Douglas S. Wong, J.), of that branch of the defendant's omnibus motion which was to **suppress** physical evidence.

Attorneys and Law Firms

[Richard M. Langone](#), Garden City, N.Y. (Constantine Dellis on the brief), for appellant.

[Richard A. Brown](#), District Attorney, Kew Gardens, N.Y. ([John M. Castellano](#), [Johnette Traill](#), [Roni Piplani](#), and [Jimei Hon](#) of counsel), for respondent.

[WILLIAM F. MASTRO](#), J.P., [SANDRA L. SGROI](#), [COLLEEN D. DUFFY](#), [HECTOR D. LASALLE](#), JJ.

DECISION & ORDER

***1** ORDERED that the judgment is affirmed.

At the defendant's **suppression** hearing, Police Officer James St. Germain testified that he and his partner responded to the scene of a shooting where they found a gunshot victim, Devin Williams. Williams described the shooter as a male wearing all black clothing, including a hoodie, and told the police officers that the shooter had boarded a bus at the nearby bus stop, which the officers observed was on the Q4 bus route. Approximately 15 minutes after speaking with Williams, the officers located a Q4 bus 1½ miles away from the scene of the shooting. The officers observed the defendant sitting in the back of the bus wearing a black hoodie and black pants. The officers boarded the bus, asked the defendant to stand up, and asked the defendant if he had a gun on him. The defendant “nodded down to his waistband.” The officers recovered a gun from the defendant's waistband, and then arrested the defendant.

The defendant moved, inter alia, to **suppress** the gun recovered by the officer. The Supreme Court denied that branch of the motion, finding that the officers properly detained and questioned the defendant because they had

reasonable suspicion to believe that he had committed a crime. The defendant contends that the court erred in denying that branch of the motion, since the officers did not have reasonable suspicion to believe that he had committed a crime, and therefore improperly stopped and detained him.

[1] [2] [3] [4] Police officers may stop or detain an individual if they have information which “provides them with a reasonable suspicion that a crime has been, is being, or is about to be committed” (*People v. Martinez*, 80 N.Y.2d 444, 447, 591 N.Y.S.2d 823, 606 N.E.2d 951; see *People v. Bowers*, 148 A.D.3d 1042, 1043, 50 N.Y.S.3d 138). “Reasonable suspicion” is the “quantum of knowledge sufficient to induce an ordinarily prudent and cautious [person] under the circumstances to believe criminal activity is at hand” (*People v. Cantor*, 36 N.Y.2d 106, 112–113, 365 N.Y.S.2d 509, 324 N.E.2d 872; see *People v. Bowers*, 148 A.D.3d at 1043, 50 N.Y.S.3d 138). In determining whether a police officer possessed reasonable suspicion, the court must evaluate the totality of the circumstances (see *People v. Loper*, 115 A.D.3d 875, 879, 981 N.Y.S.2d 806). Generally, a police officer has reasonable suspicion to stop and detain an individual where the individual matches the description of a perpetrator's appearance and is located close to the crime scene, both temporally and geographically (see *People v. Wellington*, 84 A.D.3d 984, 986, 923 N.Y.S.2d 581; *People v. Hines*, 46 A.D.3d 912, 913, 848 N.Y.S.2d 349; *People v. Private*, 259 A.D.2d 504, 504, 687 N.Y.S.2d 379; see also *Matter of Jakwon R.*, 110 A.D.3d 723, 724–725, 973 N.Y.S.2d 228).

***2** [5] Here, Police Officer St. Germain testified that the victim of the shooting provided a description of the shooter and indicated that the shooter had boarded a Q4 bus. Shortly thereafter, and within reasonable proximity to the scene of the shooting, the officers observed the defendant, whose clothing matched the victim's description, riding on a Q4 bus. Under these circumstances, the officers had reasonable suspicion to stop and detain the defendant, which led to the recovery of the weapon on his person (see *Matter of Jakwon R.*, 110 A.D.3d at 724–725, 973 N.Y.S.2d 228; *People v. Wellington*, 84 A.D.3d at 986, 923 N.Y.S.2d 581; *People v. Hines*, 46 A.D.3d at 913, 848 N.Y.S.2d 349).

The defendant's remaining contention does not require reversal.

All Citations

[MASTRO](#), J.P., [SGROI](#), [DUFFY](#) and [LASALLE](#), JJ.,
concur.

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