

2019 WL 1245702
Supreme Court, Appellate Division,
First Department, New York.

The PEOPLE of the State of New York, Respondent,
v.
Stanley HOLMES, Defendant–Appellant.

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Ind. 5650/10
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ENTERED: MARCH 19, 2019

Synopsis

Background: Defendant was convicted in the Supreme Court, New York County, [Michael R. Sonberg, J.](#), of criminal possession of a weapon in the second degree. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, held that:

[1] hearing court erred when it denied defendant's motion to **suppress** pistol;

[2] defendant was entitled to new trial; and

[3] trial court's error in precluding defendant's counsel from cross-examining police officer was not harmless.

Reversed and remanded.

West Headnotes (4)

[1] Criminal Law



Hearing court erred when it denied defendant's motion to **suppress** pistol based solely on finding that defendant lacked standing because pistol was recovered from ground, where two officers testified at hearing to effect that pistol was recovered immediately after it fell from defendant's person.

[Cases that cite this headnote](#)

[2] Criminal Law



Defendant, who was convicted of criminal possession of a weapon in the second degree, was entitled to new trial, where trial court improperly precluded his counsel from cross-examining only police officer who allegedly saw pistol falling from defendant's person about allegations raised in federal civil action against officer, which had settled.

[Cases that cite this headnote](#)

[3] Criminal Law



Trial courts retain broad discretion over the admission of prior bad acts allegedly committed by a police witness or other witness.

[Cases that cite this headnote](#)

[4] Criminal Law



Trial court's error in precluding defendant's counsel from cross-examining police officer who allegedly saw pistol falling from defendant's person about allegations raised in federal civil action against officer, which had settled, was not harmless, where case hinged on testimony of two police officers present at time pistol was retrieved from ground, and court's ruling convicting defendant of criminal possession of a weapon in the second degree pertained to only officer who allegedly saw pistol falling from defendant's person.

[Cases that cite this headnote](#)

Attorneys and Law Firms

[Robert S. Dean](#), Center for Appellate Litigation, New York ([Megan D. Byrne](#) of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Sheila O'Shea of counsel), for respondent.

Sweeny, J.P., Webber, Gesmer, Singh, JJ.

Opinion

*1 Judgment, Supreme Court, New York County (Renee A. White, J. at **suppression** hearing; Michael R. Sonberg, J. at jury trial and sentencing), rendered June 30, 2016, convicting defendant of criminal possession of a weapon in the second degree, and sentencing him, as a persistent violent felony offender, to a term of 16 years to life, unanimously reversed, on the law, and the matter remanded to Supreme Court for a determination, based upon the evidence presented at the **suppression** hearing, of the issues raised at the hearing but not decided by the court, and for a new trial.

[1] The parties correctly agree that the hearing court erred when it denied defendant's motion to **suppress** a pistol based solely on the court's finding that defendant lacked standing because the pistol was recovered from the ground. Two officers testified at the hearing to the effect that the pistol was recovered immediately after it fell from defendant's person. Since this Court lacks jurisdiction to affirm the denial of defendant's motion to **suppress** the pistol on the alternative ground that the police had reasonable suspicion to stop and frisk him, a ground upon which the hearing court did not rule, we “reverse the denial of **suppression** and remit the case to Supreme Court for further proceedings” (*People v. LaFontaine*, 92 N.Y.2d 470, 474, 682 N.Y.S.2d 671, 705 N.E.2d 663 [1998]; see also *People v. Simmons*, 151 A.D.3d 628, 629, 58 N.Y.S.3d 329 [1st Dept. 2017]) [determination of unresolved **suppression** issues following remand is to be based upon the hearing minutes]).

[2] [3] Defendant is also entitled to a new trial, because the trial court improperly precluded his counsel from cross-examining the only police officer who allegedly saw the pistol falling from his person about allegations raised in a federal civil action against the officer, which had settled. Counsel had a good faith basis for seeking to impeach the officer's credibility by asking him about

allegations that he and other officers approached and assaulted the plaintiff in that case without any basis for suspecting him of posing a danger and filed baseless criminal charges against him (see *People v. Smith*, 27 N.Y.3d 652, 666–67, 36 N.Y.S.3d 861, 57 N.E.3d 53 [2016]). Although trial courts “retain broad discretion” over the admission of prior bad acts allegedly committed by a police witness or other witness (*id.* at 660, 36 N.Y.S.3d 861, 57 N.E.3d 53), the court improvidently exercised its discretion by entirely precluding any cross-examination about the allegations at issue here without any valid justification, such as a potential to confuse the jury (see *id.* at 668, 36 N.Y.S.3d 861, 57 N.E.3d 53).

[4] We find that this error was not harmless (see *People v. Crimmins*, 36 N.Y.2d 230, 242, 367 N.Y.S.2d 213, 326 N.E.2d 787 [1975]). This case hinged on the testimony of the two police officers present at the time the pistol was retrieved from the ground, and the court's ruling pertained to the only officer who allegedly saw the pistol falling from defendant's person. Since the evidence of guilt was not overwhelming and defendant “was not permitted to cross-examine [the] witness[] regarding the acts underlying the federal lawsuit, which would have been relevant to [his] credibility,” there was a “significant probability that the jury would have acquitted if defendant had been permitted to impeach” the officer (*Smith*, 27 N.Y.3d at 668, 36 N.Y.S.3d 861, 57 N.E.3d 53). We note that the jury returned its verdict in this simple weapon possession case after deliberating for three days and receiving two *Allen* charges (see *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 [1896]), and two prior juries failed to reach a unanimous verdict on the sole count in this case.

*2 Since we are ordering a new trial, we find it unnecessary to reach defendant's remaining arguments, except that we find that the verdict was not against the weight of the evidence (see *People v. Danielson*, 9 N.Y.3d 342, 348, 849 N.Y.S.2d 480, 880 N.E.2d 1 [2007]).

All Citations

--- N.Y.S.3d ----, 2019 WL 1245702, 2019 N.Y. Slip Op. 02033