

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D33883  
W/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 23, 2012

PETER B. SKELOS, J.P.  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2009-07465

DECISION & ORDER

The People, etc., respondent,  
v Raheem Carmichael, appellant.

(Ind. No. 2507/07)

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Lynn W. L. Fahey, New York, N.Y. (Jonathan Garvin of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Sharon Y. Brodt of counsel; Lorrie A. Zinno on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Holder, J.), rendered July 16, 2009, convicting him of criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of the defendant's motion to suppress physical evidence.

ORDERED that the judgment is reversed, on the law, the defendant's motion to suppress physical evidence is granted, the indictment is dismissed, and the matter is remitted to the Supreme Court, Queens County, for the purpose of entering an order in its discretion pursuant to CPL 160.50.

At approximately 7:00 P.M., in what police described as a high-crime area, the defendant was walking near another individual who was slowly riding his bicycle unlawfully on the sidewalk. According to the testimony of the arresting officers at the suppression hearing, as they pulled over their vehicle near the two individuals and began to approach the bicyclist, the defendant's "right arm tensed up towards his body beneath his coat or at his coat line area around the vicinity of his waistband." The defendant then immediately ran away. As the officers pursued the defendant, he discarded a gun and ammunition.

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A suspect's flight alone or even his or her flight in conjunction with equivocal circumstances that might justify a police request for information is insufficient to justify pursuit (*see People v Holmes*, 81 NY2d 1056, 1058; *People v Cadle*, 71 AD3d 689; *People v Hope*, 237 AD2d 885). However, flight, "combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, could provide the predicate necessary to justify pursuit" (*People v Holmes*, 81 NY2d at 1058). Under the circumstances of this case, the "tens[ing]" of the defendant's arm "around the vicinity" of his waistband, even coupled with his flight from the officers, did not constitute specific circumstances indicative of criminal activity so as to establish the reasonable suspicion that was necessary to lawfully pursue the defendant (*id.*; *see People v Cadle*, 71 AD3d 689; *see also People v Stevenson*, 7 AD3d 820; *People v Moore*, 176 AD2d 297). Since the officers' pursuit of the defendant was unlawful, and the defendant's disposal of the weapon during the pursuit was precipitated by the illegality and was not attenuated from it (*see People v Cadle*, 71 AD3d 689; *see also People v Lopez*, 67 AD3d 708; *cf. People v Boodle*, 47 NY2d 398, *cert denied* 444 US 969), the discarded physical evidence should have been suppressed. Without that evidence, there could not be sufficient evidence to prove the defendant's guilt of criminal possession of a weapon in the second degree and, therefore, the indictment must be dismissed (*see People v Kevin W.*, \_\_\_\_\_ AD3d\_\_\_\_\_, 2012 NY Slip Op 00232 [2d Dept 2012]; *People v Smalls*, 83 AD3d 1103; *see also People v Rossi*, 80 NY2d 952).

The defendant's remaining contentions need not be reached in light of our determination.

SKELOS, J.P., LEVENTHAL, LOTT and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court