

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

564

KA 08-02489

PRESENT: HURLBUTT, J.P., PERADOTTO, CARNI, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TERRELL ZEIGLER, DEFENDANT-APPELLANT.

PAUL G. DELL, BUFFALO (BENJAMIN D. MOSKEL OF COUNSEL), FOR
DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County
(Christopher J. Burns, J.), rendered June 16, 2008. The judgment
convicted defendant, upon his plea of guilty, of criminal possession
of a weapon in the second degree.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed.

Memorandum: On appeal from a judgment convicting him, upon his
plea of guilty, of criminal possession of a weapon in the second
degree (Penal Law § 265.03 [3]), defendant contends that Supreme Court
erred in refusing to suppress the handgun seized by the police from
his person. We reject that contention. Following an anonymous
telephone call stating that three black males with certain physical
characteristics and wearing white T-shirts were carrying guns in a
specified area, a police officer responded to the scene. That officer
observed three black males matching the description provided by the
anonymous caller and asked them to approach his vehicle and to show
their hands to him. One of the individuals immediately fled, while
reaching toward his waistband. Shortly thereafter, defendant and the
third individual fled. Officers pursued the three men and, after
apprehending defendant, they recovered a handgun from his waistband.

Even assuming, arguendo, that defendant preserved for our review
his contention that the officer's verbal command to defendant to
approach the police vehicle and to show his hands to the officer
constituted an illegal seizure, we reject that contention. That
verbal command did not result in a significant interruption of
defendant's liberty of movement (see *Brown v State of New York*, 45
AD3d 15, 24-25, lv denied 9 NY3d 815; *People v Jenkins*, 209 AD2d 164,
165). Contrary to the further contention of defendant, the fact that
he and his companions did not comply with the officer's verbal

command, coupled with the fact that one of defendant's companions fled the scene while reaching toward his waistband, provided the police with reasonable suspicion that defendant and his companions were in possession of guns and justified their pursuit of defendant (see *People v Moore*, 6 NY3d 496, 500-501). "It is quite apparent to an experienced police officer, and indeed it may almost be considered common knowledge, that a handgun is often carried in the waistband" (*People v Benjamin*, 51 NY2d 267, 271). Finally, contrary to defendant's contention, the observations of the officer corroborated the anonymous caller's description of the suspects as well as the caller's claim that at least one of the suspects was carrying a gun (*cf. Moore*, 6 NY3d at 499-500).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court